Supreme Court, U.S.
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Nos. 08-1498 and 09-89

In the Supreme Court of the United States

ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.,
PETITIONERS

v.

HUMANITARIAN LAW PROJECT, ET AL.

HUMANITARIAN LAW PROJECT, ET AL., PETITIONERS

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR WRITS OF CERTIORARI IN NOS. 08-1498 AND 09-89
FILED: JUNE 4, 2009, AND JULY 6, 2009
CERTIORARI GRANTED: SEPT. 30, 2009

TABLE OF CONTENTS

Page

Docket entries from the United States Court of Appeals for the Ninth Circuit (No. 05-56846) 1

Docket entries from the United States Court of Appeals for the Ninth Circuit (No. 05-56753) 7

Docket entries from the United States District Court for the Central District of California (No. 03-cv-06107) 12

Docket entries from the United States District Court for the Central District of California (No. 98-cv-01971) 25

Complaint (filed Aug. 27, 2003) 44

Complaint (filed Mar. 19, 1998) 67

Declarations of Ralph H. Fertig:

May 11, 2005 91

Dec. 7, 2003 101

Sept. 17, 2003 105

Mar. 9, 1998 108

Declaration of Kenneth R. McKune (Apr. 21, 1998) 127

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 05-56846

HUMANITARIAN LAW PROJECT; RALPH FERTIG; HANKAI THAMIL SANGAM; TAMILS OF NORTHERN CALIFORNIA; TAMIL WELFARE AND HUMAN RIGHTS COMMITTEE; FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA; WORLD TAMIL COORDINATING COMMITTEE; NAGALINGAM JEYALINGAM,
PLAINTIFFS-APPELLANTS

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL OF THE UNITED STATES; UNITED STATES DEPARTMENT OF JUSTICE; CONDOLEEZA RICE, SECRETARY OF STATE; UNITED STATES DEPARTMENT OF STATE,
DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/04/06	7	Filed original & 15 copies Defs Alberto R. Gonzales et al's first brief on cross-appeal (Informal: n) of 48 pages & 5 Excs.; served on 4/3/06 [05-56753, 05-56846] (GV)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/18/06	9	Received Washington Legal Foundation & Allied Educational's amicus curiae brief in original & 15 copies of 28 pages; served on 4/13/06; deficient: (mtn to becm am pending) ********** FOR MERTIS [*sic*] A NEL [*sic*] ********** [05-56753, 05-56846] (GV)
		* * * * *
5/16/06	11	Filed original & 15 copies Plas Humanitarian Law, et al' second brief on cross-appeal of 60 pages (Informal: n); 5 Supplemental Excs.; served on 5/15/06 [05-56753, 05-56846] (GV)
5/22/06	12	Received American Civil Liberties, et al's amicus curiae brief in original & 15 copies of 27 pages; served on 5/10/06 deficient: (mtn to becm am pending) ***** FOR MERITS PANEL ********** [05-56753, 05-56846] (GV)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/13/06	16	Filed original & 15 copies Def's third brief on cross-appeal (Informal: n) of 63 pages [13,949 words]; served on 7/12/06 [05-56753, 05-56846] (GV)
		* * * * *
8/16/06	20	Filed original & 15 copies Plas Humanitarian Law's reply brief on cross-appeal (Informal: n) of 23 pages w/yellow covers; served on 8/13/6. Notified csl to submit 16 gray covers. [05-56753, 05-56846] (GV)
8/17/06	21	Filed original and copies reply brief, (Informal: n) of pages; (minor defcy: [05-56753, 05-56846] (GV)
		* * * * *
12/10/07	35	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Harry

DATE	DOCKET NUMBER	PROCEEDINGS
		PREGERSON, author; Sidney R. THOMAS; Johnnie B. RAWLINSON.) FILED AND ENTERED JUDGMENT. [05-56753, 05-56846] (RT)
1/24/08	36	[6408027] Filed original & 50 copies Defs' petition for panel rehearing and petition for rehearing en banc of 20 pages [4196 words]; served on 1/23/08 (PANEL AND ALL ACTIVE JUDGES AND ALL INTERESTED SENIOR JUDGES) [05-56753, 05-56846] (GV)
3/19/08	37	Filed Plas Humanitarian e. [*sic*] al original and 50 copies response to petition for rehearing enbanc [*sic*] 16 pages. 4149 pages] Served on 03/18/2008. () [05-56753, 05-56846] (GV)
		* * * * *
1/05/09	39	Filed order and amended opinion (HARRY PREGERSON, SIDNEY R. THOMAS and JOHNNIE B.

DATE	DOCKET NUMBER	PROCEEDINGS
		RAWLINSON). The opinion filed in this case on December 10, 2007, slip op. at 16135, is hereby amended as follows: (See opinion for full text). With these amendments, the panel has voted to deny the petition for panel rehearing and the petition for rehearing en banc. The full court has been advised on these amendments and of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. and no active judge has requested a vot on whether to rehear the matter en banc. (Fed. R. App. P. 35.) Future petitions for panel rehearing and future petitions for rehearing en banc will not be entertained. The petition for panel rehearing and the petition for rehearing en banc are DENIED. [05-56753, 05-56846] (RP)

DATE	DOCKET NUMBER	PROCEEDINGS
1/13/09	40	MANDATE ISSUED. (HP, SRT and JBR) [05-56753, 05-56846] (GV)

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 05-56753

HUMANITARIAN LAW PROJECT; RALPH FERTIG; ILANKAI THAMIL SANGAM; TAMILS OF NORTHERN CALIFORNIA; TAMIL WELFARE AND HUMAN RIGHTS COMMITTEE; FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA; WORLD TAMIL COORDINATING COMMITTEE; NAGALINGAM JEYALINGAM,
PLAINTIFFS-APPELLEES

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL OF THE UNITED STATES; UNITED STATES DEPARTMENT OF JUSTICE; CONDOLEEZA RICE, SECRETARY OF STATE; UNITED STATES DEPARTMENT OF STATE,
DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/04/06	13	Filed original & 15 copies Defs Alberto R. Gonzales et al's first brief on cross-appeal (Informal: n) of 48 pages & 5 Excs.; served on 4/3/06 [05-56753, 05-56846] (GV)

DATE	DOCKET NUMBER	PROCEEDINGS
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4/18/06	17	Received Washington Legal Foundation & Allied Educational's amicus curiae brief in original & 15 copies of 28 pages; served on 4/13/06; deficient: (mtn to becm am pending) ********** FOR MERITS [*sic*] APNEL [*sic*] ********** [05-56753, 05-56846] (GV)
		* * * * *
5/16/06	20	Filed original & 15 copies Plas Humanitarian Law, et al' second brief on cross-appeal of 60 pages (Informal: n); 5 Supplemental Excs.; served on 5/15/06 [05-56753, 05-56846] (GV)
5/22/06	26	Received American Civil Liberties, et al's amicus curiae brief in original & 15 copies of 27 pages; served on 5/10/06 deficient: (mtn to becm am pending) *****

DATE	DOCKET NUMBER	PROCEEDINGS
		FOR MERITS PANEL ********** [05-56753, 05-56846] (GV)
		* * * * *
7/13/06	33	Filed original & 15 copies Def's third brief on cross-appeal (Informal: n) of 63 pages [13,949 words]; served on 7/12/06 [05-56753, 05-56846] (GV)
		* * * * *
8/16/06	38	Filed original & 15 copies Plas Humanitarian Law's reply brief on cross-appeal (Informal: n) of 23 pages w/yellow covers; served on 8/13/6. Notified csl to submit 16 gray covers. [05-56753, 05-56846] (GV)
		* * * * *
12/10/07	58	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearings; Affirmed; Written, Signed, Published. Harry PREGERSON, author; Sidney R. THOMAS; Johnnie B.

DATE	DOCKET NUMBER	PROCEEDINGS
		RAWLINSON.) FILED AND ENTERED JUDGMENT. [05-56753, 05-56846] (RT)
1/24/08	61	[6408027] Filed original & 50 copies Defs' petition for panel rehearing and petition for rehearing en banc of 20 pages [4196 words]; served on 1/23/08 (PANEL AND ALL ACTIVE JUDGES AND ALL INTERESTED SENIOR JUDGES) [05-56753, 05-56846] (GV)
		* * * * *
3/19/08	64	Filed Plas Humanitarian e. [sic] al original and 50 copies response to petition for rehearing en banc 16 pages. 4149 pages] Served on 03/18/2008. () [05-56753, 05-56846] (GV)
1/05/09	65	Field order and amended opinion (HARRY PREGERSON, SIDNEY R. THOMAS and JOHNNIE B. RAWLINSON). The opinion filed in this case on Decem-

DATE	DOCKET NUMBER	PROCEEDINGS
		ber 10, 2007, slip op. at 16135, hereby amended as follows: (See opinion for full text). With these amendments, the panel has voted to deny the petition for panel rehearing and the petition for rehearing en banc. The full court has been advised of these amendments and of the petition for rehearing en banc. (Fed. R. App. P. 35.) Future petitions for panel rehearing and future petitions for rehearing en banc will not be entertained. The petition for panel rehearing and the petition for rehearing en banc are DENIED. [05-56753, 05-56846] (RP)
1/13/09	66	MANDATE ISSUED. (HP, SRT and JBR) [05-56753, 05-56846] (GV)

* * * * *

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Docket No. 2:03-cv-06107-ABC-Mc

HUMANITARIAN LAW PROJECT; RALPH FERTIG; ILANKAI THAMIL SANGAM; NAGALINGAM JEYALINGAM; WORLD TAMIL COORDINATING COMMITTEE; FEDERATION OF TAMIL SANGAMS OF NORTH AMERICAN; TAMIL WELFARE & HUMAN RIGHTS COMMITTEE, PLAINTIFFS

v.

JOHN ASHCROFT IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES; UNITED STATES DEPARTMENT OF JUSTICE; COLIN POWELL IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF STATE; UNITED STATES DEPARTMENT OF STATE, DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
8/27/03	1	COMPLAINT filed Summons(es) 60 days issued referred to Discovery James W. McMahon (rrey) (Entered: 08/29/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
10/16/03	7	NOTICE OF MOTION AND MOTION by plaintiff World Tamil for summary judgment; motion hearing set for 10:00 11/24/03 Lodged order and judgment (bg) (Entered: 10/17/2003)
		* * * * *
11/24/03	11	NOTICE OF MOTION AND MOTION by defendants to dismiss plaintiff's claims; motion hearing set for 12/22/03 at 10:00 (mg) (Entered: 12/01/2003)
		* * * * *
1/22/04	20	ORDER by Judge Audrey B. Collins: Granting in part and denying in part defendants' 11 Motion to Dismiss as follows: The court grants the motion as it relates to plaintiffs WTTC and FETNA; and the court denies the motion as it relates to plaintiffs HLP, Judge Fertig, Dr. Jeyalingam, Sangam and

DATE	DOCKET NUMBER	PROCEEDINGS
		TWHRC. And granting in part and denying in part plaintiffs' 7 for Summary Judgment as follows: The court grants the motion to the extent the court finds that the term "expert advice or assistance" is impermissibly vague; and the court denies the motion with respect to the remaining arguments raised. Accordingly, defendants are enjoined from enforcing the USA Patriot Act's prohibition on providing "expert advice or assistance" to foreign terrorist organizations against any of the remaining named plaintiffs or their members. The court declines to grant a nationwide injunction. (mg,) (Entered: 01/23/2004)
1/28/04	21	CORRECTED ORDER by Judge Audrey B. Collins: Granting in part and denying in part defendants' 11 Motion to Dismiss as follows: The court grants the motion

DATE	DOCKET NUMBER	PROCEEDINGS
		as it relates to plaintiffs WTTC and FETNA; and the court denies the motion as it relates to plaintiffs HLP, Judge Fertig, Dr. Jeyalingam, Sangam and TWHRC. And granting in part and denying in part plaintiffs' 7 Motion for Summary Judgment as follows: The court grants the motion to the extent the court finds that the term "expert advice or assistance" is impermissibly vague; and the court denies the motion with respect to the remaining arguments raised. Accordingly, defendants are enjoined from enforcing the USA Patriot Act's prohibition on providing "expert advice or assistance" to foreign terrorist organizations against any of the remaining named plaintiffs or their members. The court declines to grant a nationwide injunction. (mg,) (Entered: 01/30/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
2/6/04	22	NOTICE OF MOTION AND MOTION to file Supplemental declarations and amend the judgment filed by Plaintiffs, Federation of Tamil Sangams of North America, Ralph Fertig, Humanitarian Law Project, Nagalingam Jeyalingam, Ilankai Thamil Sangam, Tamil Welfare &Human Rights [*sic*] Committee, World Tamil Coordinating Committee. Motion set for hearing on 3/8/2004 at 10:00 AM before Honorable Audrey B. Collins. Lodged order. (shb,) (Entered: 02/13/2004)
		* * * * *
3/03/04	28	Order by Judge Audrey B. Collins granting the motion of plaintiffs WTCC and FETNA to file Supplemental declarations regarding standing and amending the judgment 22. The order of dismissal as to these two plaintiffs is reversed and summary judgment is en-

DATE	DOCKET NUMBER	PROCEEDINGS
		tered as to these two plaintiffs as well on their claim that the term "expert advice assistance," as applied to the definition of prohibited "material support" in 805(a)(2)(B) of the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. No. 107-56, 115 Stat. 272 (2001) ("USA PATRIOT Act"), codified at 18 USC, 2339A(a) and 2339B(a), is unconstitutionally vague and overbroad. Accordingly, the Corrected order of 1/30/04 is amended to permanently enjoin defendants from enforcing the restriction on providing "material support" in the form of "expert advice and assistance" in the aforesaid provision of the USA PATRIOT Act to plaintiffs WTCC and FETNA. (mg,) (Entered: 03/04/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/17/04	30	AMENDED Order by Judge Audrey B. Collins re plaintiffs Motion for Summary Judgment and Defendants Motion to Dismiss. Defendants Motion to Dismiss is denied 11. Plaintiffs Motion for Summary Judgment is granted in part and denied in part 7 as follows: 1) Plaintiffs motion is granted to the extent the court finds that the term "expert advice or assistance" is impermissibly vague; and 2) plaintiffs motion is denied with respect to the remaining arguments raised. Accordingly, defendants are enjoined from enforcing the USA Patriot Acts prohibition on providing "expert advice or assistance" to either the Kurdistan Workers Party, a.k.a. Partiya Karkeran Kurdistan, a.k.a. PKK, a.k.a. the Kurdistan Freedom and Democracy Congress, a.k.a.

DATE	DOCKET NUMBER	PROCEEDINGS
		KADEK, a.k.a. Freedom and Democracy Congress of Kurdistan, a.k.a. the Peoples Defense Force, a.k.a. Halu Mesru Savunma Kuvveti (HSK); or the Liberation Tigers of Tamil Eelam, a.k.a. LTTE, a.k.a. Tamil Tigers, a.k.a., Ellalan Force against any of the named plaintiffs or their members. The court declines to grant a nationwide injunction. (mg,) (Entered: 03/18/2004)
		* * * * *
5/12/04	37	NOTICE OF APPEAL/ REPRESENTATION STATEMENT to 9th CCA filed by defendants John Ashcroft, Colin Powell, United States Department of Justice, United States Department of State. Appeal of Order on Motion, 30 Filed On: 03/17/04; Entered On: 03/18/04; Filing fee $255., Waived. cc: John R. Tyler, Department of Justice, Civil Division; Carol

DATE	DOCKET NUMBER	PROCEEDINGS
		Sobel; David Cole; Nancy Chang (wdc,) Modified on 7/23/2004 (wdc,). (Entered: 05/12/2004)
		* * * * *
5/25/04	39	JUDGMENT by Judge Audrey B. Collins on plaintiffs Motion for Summary Judgment and Defendants Motion to Dismiss. It is Ordered and Adjudged that defendants motion under Rule 12(b)(1) to dismiss plaintiffs claims for lack of jurisdiction is DENIED. Plaintiffs motion for summary judgment and defendants Rule 12(b)(6) motion to dismiss are respectively GRANTED IN PART and DENIED in part as follows: 1) Plaintiffs motion is granted to the extent the Court found that the term "expert advice or assistance" is unconstitutionally vague; and defendants motion to dismiss this claim is DENIED; and 2) Plaintiffs

DATE	DOCKET NUMBER	PROCEEDINGS
		motion is DENIED with respect to the remaining claims and arguments made; and defendants motion to dismiss with respect to such claims and arguments is GRANTED. Accordingly, defendants are ENJOINED from enforcing the USA Patriot Acts prohibition on providing "expert advice or assistance" to either the Kurdistan Workers Party or the Liberation Tigers of Tamil Eelam against any of the named Plaintiffs or their members. The Court declined to grant a nationwide injunction. (Made JS-6. Case Terminated.) (mg,) (Entered: 05/26/2004)
		* * * * *
7/22/04	44	NOTICE OF APPEAL to 9th CCA filed by defendants John Ashcroft, Colin Powell, United States Department of Justice, United States Department of State. Appeal of

DATE	DOCKET NUMBER	PROCEEDINGS
		Judgment, 39 Filed On: 05/24/04; Entered On: 5/26/04; Filing fee $255., Waived. cc: John R. Tyler; Carol A. Sobel; David Cole; Nancy Chang; Paul L. Hoffman; Visuvanathan Rudrakumaran; Douglas N. Letter; Joshua Waldman. (weap,) (Entered: 07/22/2004)
		* * * * *
5/24/05	49	MANDATE of 9th CCA filed as to Appeal to Circuit Court, 37, Appeal to Circuit Court, 44, CCA # 04-55871, 04-56279. The judgment of said district court, appeal is vacated and remanded. Mandate received in this district on 5/27/05. (ghap,) (Entered: 06/02/05)
		* * * * *
7/25/05	52	ORDER RE: PLAINTIFFS MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS MOTION TO DISMISS AND MOTION FOR SUMMARY JUDG-

DATE	DOCKET NUMBER	PROCEEDINGS
		MENT by Judge Audrey B. Collins, The Court concludes that plaintiffs have standing to raise vagueness challenges to the terms "training," "expert advice or assistance," "personnel," and "service." Therefore, Defendants motion to dismiss forlack [*sic*] of standing is DENIED. The parties cross motions for summary judgment are GRANTED IN PART AND DENIED IN PART as follows: The Court finds that the lack of a specific intent requirement to further the terrorist activities of foreign terrorist organizations in the AEDPAs prohibition on providing material support or resources to foreign terrorist organizations does not violate due process under the Fifth Amendment. The Court GRNATS [*sic*] Defendants motion and DENIES Plaintiffs motion on this ground (see document for further

DATE	DOCKET NUMBER	PROCEEDINGS
		details) (bg,) (Entered: 07/29/2005)
		* * * * *
9/16/05	54	JUDGMENT by Judge Audrey B. Collins, It is ORDERED that The parties cross-motions for Summary Judgment are GRANTED IN PART AND DENIED IN PART; Accordingly Defendants, their agents are ENJOINED from enforcing 18 USC 2339Bs probition [*sic*] on providing "training"; The Court declined to grant a nationwide injunction. (MD JS-6, Case Terminated). (bg,) (Entered: 09/19/2005)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Docket No. 2:98-cv-01971-ABC-RC

HUMANITARIAN LAW PROJECT; RALPH FERTIG; ILANKAI THAMIL SANGAM; TAMILS OF NORTHERN CALIFORNIA; TAMIL WELFARE & HUMAN RIGHTS COMMITTEE; FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA; WORLD TAMIL COORDINATING COMMITTEE; NAGALINGAM JEYALINGAM, PLAINTIFFS

v.

ALBERTO GONZALES IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE UNITED STATES SUBSTITUTED FOR JANET RENO, UNITED STATES DEPARTMENT OF JUSTICE, CONDOLEEZA RICE IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE OF THE UNITED STATES SUBSTITUTED FOR MADELEINE ALBRIGHT, UNITED STATES DEPARTMENT OF STATE, JOHN SNOW IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE TREASURY, UNITED STATES DEPARTMENT OF THE TREASURY, DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
3/19/98	1	COMPLAINT filed Summons(es) issued referred to Discovery Brian Q. Robbins (jp) (Entered: 03/20/1998)

DATE	DOCKET NUMBER	PROCEEDINGS
	* * * * *	
3/26/98	4	NOTICE OF MOTION AND MOTION by plaintiffs for preliminary injunction; motion hearing set for 9:30 5/11/98 (kh) (Entered: 03/30/1998)
	* * * * *	
5/20/98	14	MEMO IN OPPOSITION by dfts Janet Reno, USDJ, Madeleine Albright, US Dept of State to motion for preliminary injunction [4-1] (kh) (Entered: 05/21/1998)
	* * * * *	
6/8/98	17	ORDER by Judge Audrey B. Collins GRANT in part DENY in part Plf's motion for preliminary injunction [4-1] (ENT 6/10/98), (pj) (Entered: 06/10/1998)
	* * * * *	
6/15/98	18	FINDINGS OF FACT &CONCLUSIONS [*sic*] OF LAW &ORDER [*sic*] RE MOT FOR PRELIM INJ:

DATE	DOCKET NUMBER	PROCEEDINGS
		IT IS ORD that dfts Janet Reno, as Atty Gen of the US, USDOJ, Madeleine Albright, as US Secretary of State, &U.S. [*sic*] Dept of State, etc, are preliminarily enjoined from (see doc for for [*sic*] detail). The bond requriement [*sic*] sh be waived. by Judge Audrey B. Collins for preliminary injunction (ENT 6/16/98), mld copies &ntc [*sic*] (pj) (Entered: 06/16/1998)
6/23/98	21	NOTICE OF PRELIMINARY INJUNCTION APPEAL by plaintiffs to 9th C/A from Dist. Court Ord fld 6/15/98 &ent [*sic*] 6/16/98 (cc: Carol Sobel, Center For Constitutional Rights; David Cole; Nancy Chang; John Tyler; AUSA) Fee: Paid. (pjap) Modified on 06/23/1998 (Entered: 06/23/1998)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
7/15/98	24	AMENDED NOTICE OF APPEAL by plaintiff World Tamil to 9th C/A from Dist. Court ord dted [*sic*] 6/8/98 &6/16/98 [*sic*]. Plf seek clarify appeal in furthereance [*sic*] of 6/8/98 ord. [18-2], [20-2] (cc: Carol A.1 [*sic*] Sobel, Esq; John Tyler, Civil Div. U.S. Dept of Justice; AUSA, Manella) Fee: Waived (fvap) (Entered: 07/16/1998)
8/4/98	25	NOTICE OF APPEAL by defendant Janet Reno, defendant US Dept of State to 9th C/A from Dist. Court Ord ent 6/10/98 &Ord [*sic*] ent 6/16/98, [18-2], [17-1] (cc: Frank W. Hunger; David Cole; Nancy Chang; Carol sobel) Fee: Waived (weap) (Entered: 08/04/1998)
		* * * * *
3/30/00	33	MANDATE from Circuit Court of Appeals The Crt orders that the mandate of the 9th CCA affirming is

DATE	DOCKET NUMBER	PROCEEDINGS
		hereby fld &spread [*sic*] upon the min of this US District Crt. (pj) (Entered: 04/05/2000)
		* * * * *
9/29/00	41	MANDATE from Circuit Court of Appeals # 98-56062/98-56280 the crt orders tha [*sic*] the mandate of the 9th CCA Affirming. id [*sic*] is hereby fild and spread upon the mins of this USDC> ((yc) (Entered: 10/06/2000)
		* * * * *
3/15/01	45	NOTICE of denial of petition for certiorari by plaintiffs' (bp) (Entered: 03/16/2001)
		* * * * *
7/31/01	53	NOTICE OF MOTION AND MOTION by plaintiff World Tamil Coordinating Comm for summary judgment No hearing date/time

DATE	DOCKET NUMBER	PROCEEDINGS
		set (bg) (Entered: 08/03/2001)
		* * * * *
8/1/01	57	MOTION by defendants US Dept of State, Madeleine Albright to dismiss in part, &for [*sic*] partial summary judgment (rrey) (Entered: 08/06/2001)
		* * * * *
8/14/01	60	MOTION by defendants Janet Reno, Madeleine Albright to dismiss in part, &for [*sic*] partial summary judgment (rrey) (Entered: 08/16/2001)
		* * * * *
8/28/01	65	MEMO IN OPPOSITION by plaintiff to motion to dismiss in part [60-1], motion for partial summary judgment [60-2] (bg) (Entered: 08/29/2001)
8/29/01	66	OPPOSITION by defendants to motion for summary

DATE	DOCKET NUMBER	PROCEEDINGS
		judgment [53-1] (rrey) (Entered: 08/31/2001)
		* * * * *
10/2/01	69	ORDER by Judge Audrey B. Collins GRANT in part DENY in part motion to dismiss in part [60-1], GRANT in part DENY in part motion for partial summary judgment [60-2], GRANT in part DENY in part motion to dismiss in part [57-1], GRANT in part DENY in part motion for partial summary judgment [57-2], GRANT in part DENY in part motion for summary judgment [53-1] Accordingly dts, their officers, agents, etc are permanently enjoined from enforcing the AEDPA's prohibition on pr viding training &personnel [*sic*] to foreign terrorist organizations (ENT 10/3/01) ntc sent (bg) (Entered: 10/03/2001)
10/2/01	70	FINAL JUDGMENT AND ORDER: by Judge Audrey

DATE	DOCKET NUMBER	PROCEEDINGS
		B. Collins. It is ORD that except as noted below final jgm be entered in favor of dfts that sections 302 &303 [*sic*] Fo [*sic*] the anti-terrorism &effective [*sic*] death penalty act fo [*sic*] 1996 are constitutional. It is ord that final jgm be entered in favor of plas that the terms personal & training contained in section 303 are unconstitutional ont he [*sic*] grounds that they are impermissibly vague. As such the crt issues a permanent injunction enjoining prosecution of the named plas &their [*sic*] members for violating the prohibition on providing personnel &training [*sic*] to foreing [*sic*] terrorist organizations. The crt will retain jurisdiction terminating case (MD JS-6) (ENT 10/4/01) ntc sent (bg) (Entered: 10/04/2001)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/23/01	72	NOTICE OF MOTION AND MOTION by defendants for an amendment of final jgm ; motion hearing set for 10:00 11/19/01 (rrey) (Entered: 10/24/2001)
		* * * * *
11/6/01	76	ORDER AMENDING FINAL JUDGMENT by Judge Audrey B. Collins granting motion for an amendment of final jgm [72-1] At final jgm page 2, lines 2-3, replace the phrase "to foreign terrorist organizations" with "to either the Kurdistan Workers' Party, aka Partiya Karkeran Kurdistan, aka PKK or the Liberation Tigers of Tamil Eelam aka Ltte aka Tamil Tigers, aka Ellalan Force." (ENT 11/07/01) ntc sent (bg) (Entered: 11/7/2001)
12/28/01	78	NOTICE OF APPEAL by defendant John Ashcroft, defendant Colin Powell, defendant US Dept of State, defendant United States De-

DATE	DOCKET NUMBER	PROCEEDINGS
		partment of Justice to 9th C/A from Dist. Court Final Jgm &ord [*sic*] fld 10/2/01 &ent [*sic*] 10/4/01, Ord Amd Final Jgm fld 11/6/01 &ent 11/7/01 [*sic*] [70-2], [76-1] (cc: John R. Tyler; David Cole; Nancy Chang; Carol A. Sobel) Fee: Waived (weap) (Entered: 01/03/2002)
1/2/02	77	NOTICE OF APPEAL by plaintiff Nagalingam Jeyalingam, plaintiff World Tamil, planitff Federation of Tamil, plaintiff Tamil Welfare, plaintiff Tamils Northern CA, plaintiff Ilankai Thamil Sangam, plaintiff Ralph Fertig, plaintiff Humanitarian Law to 9th C/A from Dist. Court ord fld 10/02/01, ent 10/03/01 [69-1], ord fld 11/06/01, ent 11/07/01 [76-1]. (cc: David Cole; Nancy Chang, Center For Constitutional Rights; Paul L. Hoffman, Schonbrun, De Simone, Seplow, Harris &Hoffman,

DATE	DOCKET NUMBER	PROCEEDINGS
		[*sic*] LLP; Carol A. Sobel; Visuvanathan Rudrakumaran; John Ashcroft, John Tyler, Dept of Justice, John S. Gordon, AUSA) Fee: Paid. (cbr) (Entered: 01/02/2002)
		* * * * *
2/14/05	97	MANDATE of 9th CCA filed as to Appeal to Circuit Court, 78 Appeal to Circuit Court, 77 CCA # 02-55082, 02-55083. The judgment of said district court affirmed in part, vacated and remanded. Mandate received in this district on 2/16/05. (ghap,) (Entered: 02/23/2005)
		* * * * *
5/13/05	107	Brief of Amici Curiae filed by Amici Curiae American Civil Liberties Union, Global Exchange, Jerusalem Fund for Education &Community [*sic*] Development, Middle East Children's Alliance,

DATE	DOCKET NUMBER	PROCEEDINGS
		and Operation USA. (gk,) (Entered: 05/17/2005)
		* * * * *
5/16/05	111	NOTICE OF MOTION AND MOTION for Renewed Summary Judgment filed by Plaintiff World Tamil Coordinating Committee. (yl,) (Entered: 05/20/2005)
		* * * * *
7/8/05	119	MOTION to Dismiss, in Part, and for Summary Judgment filed by Defendants the United States Attorney General, the Secretary of the United States Department of State, the United States Department of Justice, and the United States Department of State. Motion set for hearing on 7/25/2005 at 10:00 AM before Honorable Audrey B. Collins. Lodged Statement of Uncontroverted Facts. (gk,) (Entered: 07/13/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/18/05	122	MEMORANDUM in Opposition to Defendants' Motion to Dismiss or for Summary Judgment 119, and Reply in Support of Plaintiffs' Motion for Summary Judgment 111 filed by Plaintiff World Tamil Coordinating Committee. (gk,) (Entered: 07/25/2005)
		* * * * *
7/25/05	127	(DUPLICATE) ORDER RE: PLAINTIFFS' MOTION FOR SUMMARY JDUGMENT [*sic*] AND DEFENDANTS' MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT by Judge Audrey B. Collins: The Court concludes that Plaintiffs have standing to raise vagueness challenges to the terms "training," "expert advice or assistance," "personnel," and "service." Therefore, Defen-

DATE	DOCKET NUMBER	PROCEEDINGS
		dants' Motion to Dismiss for lack of standing 119 is denied. The parties' cross-motions for summary judgment 111, 119 are granted in part and denied in part. See document for specific details. (gk,) (Entered: 07/27/2005)
		* * * * *
8/19/05	134	SUPPLEMENTAL COMPLAINT re 1 filed by Plaintiffs Humanitarian Law Project, Ralph Fertig, Ilankai Thamil Sangam, Tamils of Northern California, Tamil Welfare &Human [*sic*] Rights Committee, Federation of Tamil Sangams of North America, World Tamil Coordinating Committee, Nagalingam Jeyalingam against Defendants Alberto Gonzales, United States Department of Justice, Condoleeza Rice, United States Department of State, John Snow and United States Department of the Treasury.

DATE	DOCKET NUMBER	PROCEEDINGS
		(gk,) Modified on 8/24/2005 (gk,). (Entered: 08/24/2005)
		* * * * *
9/16/05	140	JUDGMENT ON PALINTIFFS' [*sic*] MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' MOTION TO DISMISS IN PART AND CROSS-MOTION FOR SUMMARY JUDGMENT by Judge Audrey B. Collins: It is ordered and adjudged that: The Parties Cross-Motions for Summary Judgment are granted in part and denied in part as follows: (1) Plaintiffs' summary judgment motion 111 and Defendants' cross-motion for summary judgment 119 is denied to the extent that the Court finds that the terms "training"; "expert advice or assistance" in the form of "specialized knowledge"; and "service" are impermissibly vague under the Fifth Amendment. (2) Plain-

DATE	DOCKET NUMBER	PROCEEDINGS
		tiffs' summary judgment motion is denied with respect to their remaining claims and Defendants' cross-motion for summary judgment with respect to such claims and arguments is granted. Accordingly, Defendants are enjoined from enforcing 18 U.S.C. Section 2339B's prohibition on providing "training"; "expert advice or assistanced [*sic*]" in the form of "specialized knowledge"; or "service" to either the Kurdistan Workers' Party, a.k.a. Partiya Karkeran Kurdistan, a.k.a. PKK, a.k.a. the Kurdistan Freedom and Democracy Congress, a.k.a. KADEK, a.k.a. Freedom and Democracy Congress of Kurdistan, a.k.a. the People's Defense Force, a.k.a. Halu Mesru Savunma Kuvveti (HSK); or the Libaration [*sic*] Tigers of Tamil Eelam, a.k.a. LTTE, a.k.a. Tamil Tigers, a.k.a. Ellalan Force

DATE	DOCKET NUMBER	PROCEEDINGS
		against any of the named Plaintiffs or their members. The Court declines to grant a nationwide injunction. (MD JS-6, Case Terminated). (gk,) (Entered: 09/16/2005)
		* * * * *
11/10/05	143	NOTICE OF APPEAL to 9th CCA filed by defendants Alberto Gonzales, US Department of Justice, Condoleeza Rice. Appeal of Judgment 140 Filed On: 09/16/05; Entered On: 09/16/05. Filing fee $ 255. Waived. cc: John R. Tyler, Department of Justice; Carol Sobel; David Cole; Shayana Kadidal; Paul L. Hoffman; Visuvanathan Rudrakumaran. (Consolidated with CV 03-06107 ABC(RCx). (cbr,) (Entered: 11/16/2005)
		* * * * *
11/22/05	145	NOTICE OF APPEAL to 9th CCA filed by plaintiffs

DATE	DOCKET NUMBER	PROCEEDINGS
		Humanitarian Law Project, Ralph Fertig, Ilankai Thamil Sangam, Tamils of Northern California, Tamil Welfare & Human Rights Committee, Federation of Tamil Sangams of North America, World Tamil Coordinating Committee, Nagalingam Jeyalingam. Appeal of Judgment, 140 Filed On: 9/16/05; Entered On: 9/16/05; Filing fee $255, Paid receipt number 80308. cc: Carol Sobel; Alberto Gonzales and Douglas N. Letter, Department of Justice, Washington, D.C.; John Tyler, Department of Justice, Washington, D.C.; Debra Yang, United States Attorney. (ghap,) (Entered: 11/23/2005)
		* * * * *
1/13/09	159	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 145, Notice of Appeal to 9th Circuit Court of Appeals, 143, CCA # 05-56753,

DATE	DOCKET NUMBER	PROCEEDINGS
		05-56846. The Judgment of the District Court is AFFIRMED. Mandate received in this district on 1/13/09. (lr) (Entered: 01/20/2009)

* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

No. 2:03-cv-06107-ABC-Mc

HUMANITARIAN LAW PROJECT, RALPH FERTIG, ILANKAI THAMIL SANGRAM, DR. NAGALINGAM JEYALINGAM, WORLD TAMIL COORDINATING COMMITTEE, FEDERATION OF TAMIL SANGRAMS OF NORTH AMERICA, TAMIL WELFARE AND HUMAN RIGHTS COMMITTEE, PLAINTIFFS

v.

JOHN ASHCROFT, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES; UNITED STATES DEPARTMENT OF JUSTICE; COLIN POWELL, IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF STATE; UNITED STATES DEPARTMENT OF STATE; DEFENDANTS

[Filed: Aug. 27, 2003]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the constitutionality of §§ 302 and 303 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) ("AEDPA") as they were modified by the United

and Strengthening America by the Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act"), Pub. L. No. 107-56, 115 Stat. 272 (2001), on the grounds that they criminalize the provision of "expert advice and assistance" to the lawful and non-violent activities of organizations that the Secretary of State ("Secretary") designates as foreign terrorist organizations ("designated organizations"). The AEDPA effectively grants the Secretary blanket, unreviewable authority to designate any foreign organization that engages in any unlawful use or threat of force against person or property a "terrorist organization." The USA PATRIOT Act, in Title VIII, § 805(a)(2)(B), then makes it a crime, punishable by up to 15 years imprisonment or a substantial fine, or both, to provide "expert advice and assistance" to a designated organization. This appears to make it a criminal offense for a United States citizen to engage in any activity that helps a designated organization in any way that might be considered "expert," even if the expertise provided is in the form of international law training, human rights advocacy, the provision of medical advice on improving health care in regions controlled by the organization, political organizing, or publication of literature. The plaintiffs in this action consist of five organizations and two United States citizens who wish to provide material support to the lawful humanitarian and political activities of two designated organizations, the Kurdistan Workers' Party ("PKK") and the Liberation Tigers of Tamil Eelam ("LTTE"). Plaintiffs maintain that the First and Fifth Amendments to the United States Constitution protect their rights to provide such advice and assistance and render § 805(a)(2)(B) of the USA PATRIOT Act unconstitutional as applied to such

support. However, because the Secretary has designated the PKK and the LTTE as foreign terrorist organizations, plaintiffs are afraid to provide such advice and assistance out of fear of criminal investigation, prosecution and conviction. Plaintiffs seek declaratory and injunctive relief declaring the USA PATRIOT Act to be unconstitutional to the extent that it criminalizes the provision of "expert advice and assistance" and enjoining the government from criminally prosecuting individuals and organizations for providing expert advice and assistance to designated organizations.

JURISDICTION AND VENUE

2. This action arises under the United States Constitution, the AEDPA and the USA PATRIOT Act. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1361.

3. The Court may grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and Rule 57 of the Federal Rules of Civil Procedure ("F.R.C.P."). The Court may grant injunctive relief pursuant to F.R.C.P. Rule 65.

4. Venue lies in the Central District of California, the federal judicial district in which plaintiff International Educational Development, Inc./Humanitarian Law Project is headquartered and plaintiff Ralph Fertig resides.

PARTIES

Plaintiffs

5. Plaintiff HUMANITARIAN LAW PROJECT ("HLP") is a not-for-profit organization headquartered

at 8124 West Third Street, Los Angeles, California 90048. In 1989, the International Educational Development, Inc., a non-sectarian not-for-profit organization founded in the 1950s by Jesuit brothers to provide assistance to schools, hospitals, and impoverished third world communities, absorbed the Humanitarian Law Project into its operation. The HLP, which is also referred to as the International Educational Development, Inc./Humanitarian Law Project, advocates for the peaceful resolution of armed conflicts and for worldwide compliance with humanitarian law and human rights law. It has consultative status to the United Nations ("U.N.") and regularly participates in meetings of the U.N. Commission on Human Rights in Geneva, Switzerland. It sues on its own behalf.

6. Plaintiff RALPH D. FERTIG is the President of the HLP and appears as a plaintiff in this action in his individual capacity. Judge Fertig is an Assistant Professor at the University of Southern California's Graduate School of Social Work [*sic*] was a federal Administrative Judge for the U.S. Equal Employment Opportunity Commission until his recent retirement. Before that, Judge Fertig was a civil rights attorney, social worker, and sociologist. He has devoted more than half a century to human rights work in the United States and abroad. He has served continuously as a member of the HLP's Board of Directors since 1989, and has been the President of the HLP from 1993 to 1995 and from 1997 to the present. He has participated in HLP delegations that have investigated human rights violations in Turkey, Mexico, and El Salvador. He is a United States citizen and resides in Los Angeles, California.

7. Plaintiff ILANKAI THAMIL SANGAM ("Sangam") is a not-for-profit corporation founded in 1977, incorporated in New Jersey, and headquartered in Maryknoll, New York. The Sangam has approximately 135 members who reside in the New York City metropolitan area, most of whom are Tamils who were born in Sri Lanka. Its membership includes citizens and non-citizens, many of whom are professionals in the fields of medicine, law, accounting and business. The Sangam's objectives are to promote the association of Tamils in the New York City area, to promote knowledge of the Tamil language, culture, and heritage, and to provide humanitarian assistance to Tamils in Sri Lanka, especially those who are refugees and orphans as a result of the political strife in Sri Lanka. It sues on its own behalf and on behalf of its members.

8. Plaintiff DR. NAGALINGAM JEYALINGAM is a naturalized United States citizen who is a Tamil from Sri Lanka[.] Dr. Jeyalingam was the President of the Ilankai Thamil Sangam from 1995 to 1997, and is. [*sic*] currently an active member of that organization. He graduated from University of Colombo, Sri Lanka and came to the United States in 1970 to undergo specialized medical training in the field of otolaryngology. He is a New York State-licensed physician, a Fellow of the American Academy of Otolaryngology and Head and Neck Surgery, and a member of the New York State Medical Society and the Medical Society of Orange County of New York. He has been practicing as a surgeon in New York for more than 25 years. He resides in Newburgh, New York. He sues solely in his individual capacity.

9. Plaintiff WORLD TAMIL COORDINATING COMMITTEE ("WTCC") is an organization headquartered in Jamaica, New York. Its objectives are to advocate in the United States in favor of Tamil self-determination in Sri Lanka and for an end to systemic human rights violations against Tamils living in Sri Lanka. It sues on its own behalf.

10. Plaintiff FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA ("FETNA") is a non-profit corporation headquartered in Chicago, Illinois, which was founded in 1986. It is an umbrella organization whose membership includes approximately 30 Sangams in the United States, including plaintiff Ilankai Thamil Sangam. The term "Sangam" in the Tamil language refers to an association. The FETNA's purposes are to encourage the appreciation of Tamil language, literature, arts, cultural heritage and history, and to encourage friendship among the Tamils and the Tamil Sangams throughout North America and the world. Each of its member Sangams shares these purposes. The FETNA member Sangams are comprised of United States citizens and non-citizens who are ethnic Tamils from all over the world, including India and Sri Lanka. The FETNA sues on behalf of its member Sangams, and their individual members, who seek to support the lawful and non-violent activities of the LTTE.

11. Plaintiff TAMIL WELFARE AND HUMAN RIGHTS COMMITTEE ("TWHRC") is a Maryland association headquartered in Bethesda, Maryland. Founded in 1987, it consists of approximately 100 Tamils. Its members, both United States citizens and non-citizens, are Tamils born in Sri Lanka, and many of its members have family and friends who currently live in

Sri Lanka. The TWHRC's primary objectives are to protect the human rights of the Tamils in Sri Lanka and to promote their health, social well-being, and welfare. It sues on its own behalf and on behalf of its members, who seek to support the lawful and non-violent activities of the LTTE.

Defendants

12. Defendant JOHN ASHCROFT is sued only in his official capacity as the Attorney General of the United States. He is responsible for prosecuting violations of the AEDPA and the USA PATRIOT Act.

13. Defendant UNITED STATES DEPARTMENT OF JUSTICE is responsible for prosecuting criminal violations of the federal laws, including the AEDPA and the USA PATRIOT Act.

14. Defendant COLIN POWELL is sued only in his official capacity as the United States Secretary of State. The Secretary is responsible for designating "foreign terrorist organizations" under the AEDPA. 8 U.S.C. §1189.

15. Defendant UNITED STATES DEPARTMENT OF STATE is responsible for designating "foreign terrorist organizations" under the AEDPA, 8 U.S.C. §1189.

STATUTORY AND REGULATORY FRAMEWORK

16. On April 24, 1996, the AEDPA went into effect. Title III of the AEDPA, entitled "International Terrorism Prohibitions," criminalizes, *inter alia*, the provision of material support or resources to designated organizations.

17. Section 303(a) of the AEDPA, 18 U.S.C. § 2339B, is entitled "Providing Material Support or Resources to Designated Foreign Terrorist Organizations." Pursuant to 18 U.S.C. § 2399B(a), it is a criminal offense, punishable by up to 10 years imprisonment or a substantial fine, or both, to "knowingly provide[] material support or resources to a foreign terrorist organization, or [to] attempt[] or conspire[] to do so[.]"

18. The AEDPA defines "material support or resources" as "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." 18 U.S.C. § 2339A; 18 U.S.C. § 2339(B)(a) [*sic*] and (g)(4).

19. Section 303(a) of the AEDPA provides that "[t]he Attorney General shall conduct any investigation of a possible violation of [18 U.S.C. § 2339B] . . . ." 18 U.S.C. § 2339B(e).

20. Section 303(a) of the AEDPA authorizes the Attorney General to initiate a civil action in a district court to seek an injunction "[w]henever it appears to the Secretary [of the Treasury] or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of [18 U.S.C. § 2339B]." 18 U.S.C. § 2339B(c).

21. Section 302 of the AEDPA, entitled "Designation of Foreign Terrorist Organizations," establishes the procedures which the Secretary must follow in designating organizations as foreign terrorist organizations. 8 U.S.C. § 1189. It authorizes the secretary to designate any foreign organization that "engages in terrorist ac-

tivity (as defined in [8 U.S.C. §1182(a)(3)(B)])," and whose terrorist activity "threatens the security of United States nationals or the national security of the United States." "Terrorist activity" is defined to include, *inter alia*, any unlawful use of, or threat to use, an explosive or firearm against person or property, unless for mere personal monetary gain. 8 U.S.C. §1182(a)(3)(B)(ii)(V)-(VI). "National security" is, in turn, defined to mean "the national defense, foreign relations, or economic interests of the United States." 8 U.S.C. §1189(c)(2). Thus, the AEDPA gives the Secretary discretion to designate any foreign organization that uses or threatens force and whose actions the Secretary deems contrary to our foreign relations.

22. The Secretary's designation is for all practical purposes unreviewable. The AEDPA allows a designated organization to challenge its designation within 30 days by filing a suit in the Court of Appeals for the District of Columbia. However, the designation can be supported by classified information presented *ex parte* and *in camera* to the Court and not disclosed to the organization; the appeal is decided on the administrative record, and thus affords no opportunity for the organization to submit evidence; and the Secretary's determination that a group's activities threaten the "foreign relations" or "national security" of the United States is nonjusticiable, as a court cannot second-guess the Secretary of State on what threatens foreign relations or national security.

23. Once an organization is designated as a foreign terrorist organization, it becomes a crime under 18 U.S.C. § 2339B for anyone to knowingly provide it material support or resources.

24. On October 8, 1997, Madeline Albright, the previous Secretary of State, designated 30 organizations, including the PKK and the LTTE, as foreign terrorist organizations under the AEDPA. 62 Fed. Reg. 52,649-52,651 (October 8, 1997). The PKK and the LTTE continue to be designated as foreign terrorist organizations under the AEDPA.

25. On November 6, 1997, the LTTE sought judicial review of the Secretary's decision to designate it as a foreign terrorist organization in the United States Court of Appeals for the District of Columbia, pursuant to 8 U.S.C. §1189. The LTTE maintained, *inter alia*, that it is a national liberation movement seeking to realize the right of the Tamil people to self-determination pursuant to a mandate of the Tamil people and that it is not a terrorist organization under either the laws of the United States or international law. The Court of Appeals, however, refused to remove the designation.

26. The PKK considered challenging its designation, but upon consultation with attorneys in the United States, determined that the judicial review process was illusory, particularly in light of the non-justiciable nature of the Secretary's determinations of "foreign policy" and "national security," and therefore decided not to file suit. It objects, however, to its designation as a "foreign terrorist organization."

27. In a related suit filed in March 1998 by the plaintiffs in this suit challenging the AEDPA material support provision, Judge Audrey Collins granted a preliminary injunction that, in relevant part, prohibited prosecution under the terms "training" and "personnel" in the definition of "material support or resources" on the grounds that they are unconstitutionally vague. *Hu-*

manitarian Law Project v. Reno, 9 F. Supp. 1176 (C.D. Cal. 1998). In March 2000, The [*sic*] Ninth Circuit upheld the preliminary injunction and recognized that the vague definition of prohibited activity threatened to chill the plaintiffs' constitutionally protected activities. *Humanitarian Law Project v. Reno*, 205 F.3d 1130 (9th Cir. 2000).

28. On October 2, 2001, Judge Collins issued a permanent injunction that, in relevant part, enjoined defendants from prosecuting plaintiffs based on the portion of AEDPA prohibiting the provision of "material support or resources" in the form of "training" or "personnel" to designated "foreign terrorist organizations" on the grounds that the terms are unconstitutionally vague. *Humanitarian Law Project v. Reno*, No. CV 98-1971 ABC (BQRx), 2001 U.S. Dist. LEXIS, 16729 (C.D. Cal. 2001). The permanent injunction was appealed to the Ninth Circuit and argument has been heard, but no decision has been issued.

29. On October 26, 2001, Congress enacted the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act"), P.L. 107-56. Section 805(a)(2)(B) of the USA PATRIOT Act amended 18 U.S.C. §2339A. Specifically, it broadened the definition of "material support or resources" to add as a proscribed act the provision of "expert advice or assistance." Section 810(d) of the USA PATRIOT Act amended 18 U.S.C. §2339B(a)(1) to provide for imprisonment from 15 years to life for violations. The term "expert advice or assistance" is so open-ended, vague, and overbroad that it would appear to criminalize a wide range of constitutionally protected conduct, including

representing an organization in a challenge to its designation, or teaching an organization how to petition and advocate for human rights. This suit challenges the Patriot Act amendment to the material support provision.

THE PKK AND THE LTTE

30. The PKK (a.k.a. "KADEK") is a political organization that was formed approximately 25 years ago by the Kurds in Southeastern Turkey with the goal of achieving political autonomy or self-determination. For more than 75 years, the Turkish government has subjected the Kurds to gross human rights abuses and discriminatory treatment. The Turkish government refuses to recognize the Kurds as a distinct and separate people with their own language, history, culture, identity and aspirations. Under Turkish law, one may be convicted of the crime of "separatism" for speaking publicly or publishing in Kurdish, or for expressing sympathy for the concept of Kurdish autonomy and self-determination. The PKK is the principal political organization representing the interests of the Kurds in Turkey and has mass support among the Kurds. The PKK has a political wing, known as the National Liberation Front of Kurdistan ("ERNK"), which engages in political organizing and advocacy both inside and outside Turkey, and provides social services and humanitarian aid to Kurdish refugees from Turkish abuses. The PKK also has a military wing, the Kurdish National Liberation Army ("ARGK"), which has engaged in military combat with Turkish armed forces, but has bound itself to the Geneva Convention and Protocols and has renounced terrorism.

31. The LTTE is a political organization that was formed in 1976 by Tamils in the Northern and Eastern Provinces of Sri Lanka, an area known as Tamil Eelam. Sri Lanka is populated by two major groups—the Tamils, who constitute a numerical minority of the population, and the Sinhalese, who constitute a numerical majority. For decades, the Tamils have been subjected to systematic human rights abuses and discrimination on the basis of ethnicity by the Sinhalese, who have controlled Sri Lanka since that nation gained its independence from Great Britain in 1948. The LTTE is the principal political organization advocating for the human rights of the Tamils, and for self-determination for the Tamils of Tamil Eelam. In furtherance of its goals, it engages in political organizing and advocacy, diplomatic activity, the provision of social services and humanitarian aid, the establishment of a quasi-governmental structure in Tamil Eelam, economic development, defense of the Tamil people from Sri Lankan human rights abuses, and military struggle against the government of Sri Lanka.

PLAINTIFFS' DESIRES TO SUPPORT THE PKK AND THE LTTE

Humanitarian Law Project ("HLP") and Ralph Fertig

32. Since 1991, the HLP and Judge Fertig have devoted a substantial amount of time and resources to advocating on behalf of the Kurds living in Turkey, and to working with and providing training, expert advice and other forms of support to the PKK in its efforts to protect the Kurds from human rights abuses. Both Judge Fertig and the HLP are opposed to the use of terrorism.

They have sought to assist the PKK and the Kurds in securing human rights only through non-violent means.

33. Judge Fertig and other HLP board members have traveled to Turkey, Kurdish exile communities in Europe, and other locations, to conduct fact-finding investigations, and have interviewed numerous individuals with first-hand knowledge of the relationship between the Turkish government and the Kurds, including members of the Turkish Parliament, journalists, human rights activists, lawyers, academicians, PKK members, and political prisoners.

34. The HLP and Judge Fertig have published many reports and articles presenting their findings and conclusions, which are generally supportive of the PKK and the struggle for Kurdish liberation. They have concluded that the Turkish government is guilty of committing extensive human rights violations against the Kurds, including the widespread use of arbitrary detentions and torture for persons who merely speak out for equal rights for Kurds or are suspected of sympathizing with those who do; the summary execution of more than 18,000 Kurds, and the destruction of some 2,400 Kurdish villages. In addition, they have concluded that the PKK is a party to an armed conflict governed by Geneva Conventions and Protocols and, therefore, is not a terrorist organization, as that term is understood in international law.

35. Since 1991, the HLP has sent a delegation to the U.N. Commission on Human Rights to advocate for the political interests of the Kurds living in Turkey. The HLP delegation has twice submitted reports to the U.N. that have documented human rights abuses by the Turkish government against the Kurds and have advo-

cated for the right of the PKK to be granted the protections of the Geneva Conventions and Protocols.

36. In the past, Judge Fertig and HLP members acting as individuals have petitioned members of the United States Congress to support human rights for the Kurds, to curtail United States military support to the Turkish armed forces, and to encourage negotiations between the PKK and the Turkish government. They have petitioned members of Congress to urge Turkey to release from prison Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak, all of whom were elected to the Turkish Parliament in 1991 and are now serving 15-year sentences because the Turkish government has found that they are members or supporters of the PKK.

37. Judge Fertig, acting on behalf of the HLP, has participated in international peace conferences and other meetings where he has assisted members of the PKK and its political arm, the ERNK, in attempting to resolve peacefully the conflict between the Turkish government and the Kurds. In addition, Judge Fertig and other HLP representatives have provided training to some members of the PKK and other Kurds on how to present their human rights claims before the U.N. and other public-policy making bodies, including the United States Congress.

38. Since the PKK was designated as a foreign terrorist organization, the HLP and Judge Fertig had been deterred from continuing to assist the PKK to improve conditions for the Kurds living in Turkey. They want to continue to provide the forms of support they had previously provided, and would like to provide additional support as well. Specifically, they would like to: (1) engage in political advocacy on behalf of the PKK and the

Kurds before the U.N. Commission on Human Rights and the United States Congress; (2) provide the PKK and the Kurds with training and written publications on how to engage in political advocacy on their own behalf and on how to use international law to seek redress for human rights violations; (3) write and distribute publications supportive of the PKK and the cause of Kurdish liberation; (4) advocate for the freedom of political prisoners in Turkey, including Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak; and (5) assist PKK members at peace conferences and other meetings designed to support a peaceful resolution of the Turkish conflict.

39. The HLP and Judge Fertig would like to provide support to the PKK and the Kurdish people. However, they are afraid that the conduct in which they have engaged and in which they wish to continue to engage in may come within the scope of "expert advice or assistance." These activities include advising Kurds and Kurdish groups on recent developments in international human rights law, the procedures for seeking review by the newly established International Criminal Court, peacemaking negotiation skills, and advocacy of the rights of Kurds before the Human Rights Subcommission of the United Nations and legislative bodies throughout the world, including the United States Congress. Since the enactment of the USA PATRIOT Act and the amendment of the term "material support" to include "expert advice or assistance," the HLP and Judge Fertig have refrained from providing this advice and assistance for fear that they would be subjected to criminal prosecution.

Ilankai Thamil Sangam ("Sangam")

40. The Sangam and its members, many of whom are physicians, are deeply committed to improving medical care for the Tamils in Sri Lanka. The Sangam and its members wish to offer their expert medical advice and assistance to the LTTE by consulting with the LTTE on how the health care system in Tamil Eelam can be improved and by volunteering their advice and assistance to hospitals and medical centers in LTTE-controlled areas, some of which are run by the LTTE. The Sangam and its members do not seek to support any military or unlawful activities of the LTTE. The fear of criminal investigation, prosecution, and conviction deters the Sangam and its members from providing this expert advice and assistance to the LTTE.

Dr. Nagalingam Jeyalingam

41. Dr. Jeyalingam is deeply concerned for the welfare of the Tamils in Sri Lanka who lack many of the basic necessities of life, including adequate shelter, food, clothing, and medical care. Members of Dr. Jeyalingam's immediate family, including his mother, brothers, and sisters, were displaced from their homes and forced to flee from Sri Lanka to India as refugees in 1983.

42. Dr. Jeyalangam [*sic*] traveled to the Tamil Eelam region in northeast Sri Lanka in April of 2002, several months after the LTTE and the Sri Lankan government entered into a cease fire. During his travels, Dr. Jeyalangam [*sic*] visited a hospital in the Vanni region of Tamil Eelam, which is run by the LTTE. He

observed first-hand the lack of trained physicians and he would like to return to the Tamil Eelam region in order to consult with and provide to the LTTE his expert advice on how to improve the delivery of health care, with a special focus on the area of otolaryngology, and to provide his services as a trained otolaryngology specialist for a period of six months or longer. He is afraid to do so because he is fearful that he would be subjected to criminal prosecution for providing "expert advice and assistance" to the LTTE. Dr. Jeyalingam seeks to support only the lawful objectives of the LTTE.

World Tamil Coordinating Committee ("WTCC")

43. The WTCC and its members wish to provide expert advice and assistance to the LTTE toward the goals of achieving normalcy in war-torn Tamil Eelam and negotiating a permanent peace agreement between the LTTE and the government of Sri Lanka. Specifically, the WTCC and its members have expertise in the fields of politics, law, and economic development, and they wish to provide the LTTE with expert advice and assistance in these fields. Their expert advice and assistance is urgently needed to preserve the fragile peace that was put into place with the December 2001 ceasefire between the LTTE and the government of Sri Lanka and strengthened with the commencement of peace talks in September 2002. However, the WTCC and its members are afraid to provide their expert advice and assistance out of fear that they would be prosecuted under the Patriot Act for providing material support. The WTCC does not intend any of its activities to further illegal or violent ends.

Federation of Tamil Sangams of North America ("FETNA")

44. Many members of FETNA wish to provide their expert advice and assistance to the Tamils in the Tamil Eelam region, which is under the control of the LTTE. The cultural life and arts of Tamil Eelam suffered a severe setback during the years of civil war and are ripe for revival now that war has ended. Specifically, the FETNA's members have expertise in the fields of Tamil language, literature, arts, cultural heritage, and history, and they wish to provide their expert advice and assistance in these fields to Tamils in Tamil Eelam by developing school curricula in these subjects, teaching these subjects in the schools, and rebuilding Tamil Eelam's libraries and arts programs. However, in order for FETNA and its members to do this, they would be required to work in coordination with the LTTE, which controls the infrastructure in Tamil Eelam, and the FETNA and its members are fearful that doing so would lead to their prosecution under the Patriot Act for providing material support in the form of expert advice and assistance to the LTTE. The FETNA's members seek to support only the lawful humanitarian projects of the LTTE, and not its military activities.

Tamil Welfare and Human Rights Committee ("TWHRC")

45. The TWHRC and its members wish to provide expert advice and assistance to the LTTE so that Tamil Eelam can recover from the ravages of war and rebuild its devastated infrastructure. Specifically, the TWHRC and its members have expertise in the fields of economic development and information technology, and they wish

to provide the LTTE with expert advice and assistance in these fields towards the goal of promoting civil peace and stability in the lives of the Tamils of Tamil Eelam. However, the TWHRC and its members are afraid to do so out of fear that they would be prosecuted under the Patriot Act for providing material support in the form of expert advice and assistance. The TWHRC seeks only to support the LTTE's humanitarian efforts and does not seek to support the LTTE's military activities.

IRREPARABLE INJURY

46. All of the plaintiffs are suffering ongoing irreparable injury to their First Amendment rights, because the AEDPA, the USA PATRIOT Act, and the Secretary's designation of the LTTE and the PKK have deterred them from engaging in associational and speech activity that is protected by the First Amendment. This injury is exacerbated by the USA PATRIOT Act's vague and open-ended definition of "expert advice and assistance" and by the Secretary's selection of certain disfavored groups for designation.

47. Plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION

48. The allegations contained in the above paragraphs are repeated and realleged as though fully set forth herein.

49. Section 805(a)(2)(B) of the USA PATRIOT Act violates the First Amendment to the Constitution's guarantees of freedom of speech and association and to petition the government for a redress of grievances insofar as it makes it a criminal offense to provide "expert

advice and assistance" to a designated organization absent specific intent to further the organization's unlawful ends.

SECOND CAUSE OF ACTION

50. The allegations contained in the above paragraphs are repeated and realleged as though fully set forth herein.

51. Sections 302 and 303 of the AEDPA and §805(a)(2)(B) of the USA PATRIOT Act violate the First and Fifth Amendments to the Constitution by granting the Secretary of State effectively unreviewable authority to designate foreign organizations as "terrorist" and prohibit the provision of "expert advice and assistance," thereby inviting viewpoint discriminatory targeting of particular groups and their supporters based on their political views.

THIRD CAUSE OF ACTION

52. The allegations contained in the above paragraphs above, [*sic*] are repeated and realleged as though fully set forth herein.

53. Section 805(a)(2)(B) of the USA PATRIOT Act violates the First and Fifth Amendments to the Constitution because its prohibition of "expert advice or assistance" is impermissibly vague and substantially overbroad, failing to afford adequate notice to individuals of what is prohibited, giving government officials unfettered discretion in enforcement, and causing individuals to avoid First Amendment protected activity in order to steer clear of the prohibited conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs seek an order and judgment:

1. Preliminarily and permanently enjoining defendants from criminally prosecuting plaintiffs under 18 U.S.C. § 2339B, as amended by the USA PATRIOT Act, for providing material support or resources in the form of "expert advice or assistance" to a designated foreign terrorist organization absent a specific intent to further the organization's unlawful terrorist activities;

2. Declaring the prohibition on the provision of "expert advice and assistance" added by § 805(a)(2)(B) of the USA PATRIOT Act unconstitutional as applied to plaintiffs' conduct because it violates the First Amendment and Fifth Amendments [*sic*] to the United States Constitution by criminalizing the act of providing material support or resources in the form of expert advice or assistance to designated foreign terrorist organizations without requiring a showing of specific intent to further the organization's unlawful terrorist activities, and by doing so in an impermissibly vague and overbroad manner;

3. Awarding plaintiffs their costs and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. §2412 *et seq.*; and

4. Granting such other and further relief as the Court may deem just and proper.

DATED: August 27, 2003

Respectfully submitted,
DAVID COLE
NANCY CHANG
CENTER FOR CONSTITUTIONAL RIGHTS
LAW OFFICE OF CAROL A. SOBEL
SCHONBRUN, DE SIMONE, SEPLOW, HARRIS & HOFFMAN
VISUVANATHAN RUDRAKUMARAN

By: /s/ CAROL A. SOBEL
CAROL A. SOBEL
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

Case No. 98-1971 ABC (BQR)

HUMANITARIAN LAW PROJECT; RALPH FERTIG, ILANKAI THAMIL SANGAM; TAMILS OF NORTHERN CALIFORNIA; TAMIL WELFARE AND HUMAN RIGHTS COMMITTEE; FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA; WORLD TAMIL COORDINATING COMMITTEE; AND NAGALINGAM JEYALINGAM, PLAINTIFFS

v.

JANET RENO, AS ATTORNEY GENERAL OF THE UNITED STATES; UNITED STATES DEPARTMENT OF JUSTICE; MANDELEINE ALBRIGHT, AS UNITED STATES SECRETARY OF STATE; AND UNITED STATES DEPARTMENT OF STATE, DEFENDANTS

[Filed: Mar. 19, 1998]

COMPLAINT

INTRODUCTION

1. This action challenges the constitutionality of §§ 302 and 303 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L No. 104-132, 110 Stat. 1214 (1996) ("Act"), on the grounds that they criminalize the provision of "material support or resources" to the law-

ful and non-violent activities of organizations that the Secretary of State ("Secretary") designates as foreign terrorist organizations ("designated organizations"). The Act effectively grants the Secretary blanket, unreviewable authority to designate any foreign organization that engages in any unlawful use or threat of force against person or property a "terrorist organization." It then makes it a crime, punishable by up to 10 years imprisonment or a substantial fine, or both, to provide "material support or resources," including books and educational materials to a school, food, clothing, and toys to an orphanage, and blankets to a refugee relief center, if these institutions are run by a designated organization. In addition, the material support proscribed by the Act is defined to include the provision of "personnel," which appears to make it a criminal offense for a United States citizen to donate his or her own time or services to any activity on behalf of a designated organization, including political organizing, engaging in peace negotiations, and publishing and distributing literature. The proscribed material support is also defined to include "training," which appears to make it a crime to teach organization members how to lobby and advocate for human rights. The plaintiffs in this action consist of six organizations and two United States citizens who wish to provide material support to the lawful humanitarian, and political activities of two designated organizations, the Kurdistan Workers' Party ("PKK") and the Liberation Tigers of Tamil Eelam ("LTTE"). Plaintiffs maintain that the First and Fifth Amendments to the United States Constitution protect their rights to provide such support and render §§ 302 and 303 of the Act unconstitutional as applied to such support. However, because the Secretary has designated the PKK and the

LTTE as foreign terrorist organizations, plaintiffs are afraid to provide such support out of fear of criminal investigation, prosecution, and conviction. Plaintiffs seek declaratory and injunctive relief declaring the Act to be unconstitutional to the extent that it criminalizes the provision of support not intended to further the unlawful activities of designated organizations and enjoining the government from criminally prosecuting individuals and organizations for providing support to designated organizations absent a specific intent to further the organization's unlawful terrorist activities.

JURISDICTION AND VENUE

2. This action arises under the United States Constitution and the Act. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1361.

3. The Court may grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and Rule 57 of the Federal Rules of Civil Procedure ("F.R.C.P."). The Court may grant injunctive relief pursuant to F.R.C.P. Rule 65.

4. Venue lies in the Central District of California, the federal judicial district in which plaintiff Humanitarian Law Project is headquartered and plaintiff Ralph Fertig resides.

PARTIES

Plaintiffs

5. Plaintiff HUMANITARIAN LAW PROJECT ("HLP") is a not-for-profit organization headquartered at 8124 West Third Street, Los Angeles, California 90048. In 1989, the International Educational Develop-

ment, Inc., a non-sectarian not-for-profit organization founded in the 1950's by Jesuit brothers to provide assistance to schools, hospitals, and impoverished third world communities, absorbed the Humanitarian Law Project into its operation. The HLP, which is also referred to as the International Development, Inc./ Humanitarian Law Project, advocates for the peaceful resolution of armed conflicts and for world-wide compliance with humanitarian law and human rights law. It has consultative status to the United Nations ("U.N.") as a non-governmental organization and regularly participates in meetings of the U.N. Commission on Human Rights in Geneva, Switzerland. It sues on its own behalf.

6. Plaintiff RALPH D. FERTIG is the President of the HLP and appears as a plaintiff in this action in his individual capacity. Judge Fertig has been a federal administrative judge for the United States Equal Employment Opportunity Commission for the last three and a half years. Before that, Judge Fertig was a civil rights attorney, social worker, and sociologist. He has devoted more than half a century to human rights work in the United States and abroad. He has served continuously as a member of the HLP's Board of Directors since 1989, and has served as the President of the HLP from 1993 to 1995 and from 1997 to the present. He has participated in HLP delegations that have investigated human rights violations in Turkey, Mexico, and El Salvador. He is a United States citizen and resides in Los Angeles, California.

7. Plaintiff ILANKAI THAMIL SANGAM ("Sangam") is a not-for-profit corporation founded in 1977, incorporated in New Jersey, and headquartered in

Maryknoll, New York. The Sangam has approximately 135 members who reside in the New York City metropolitan area, most of whom are Tamils who were born in Sri Lanka. Its membership includes both citizens and non-citizens, many of whom are professionals in the fields of medicine, law, accounting, and business. The Sangam's objectives are to promote the association of Tamils in the New York City area, to promote knowledge of the Tamil language, culture, and heritage, and to provide humanitarian assistance to Tamils in Sri Lanka, especially those who are refugees and orphans as a result of the political strife in Sri Lanka. It sues on its own behalf and on behalf of its members,

8. Plaintiff DR. NAGALINGAM JEYALINGAM is a naturalized United States citizen who is a Tamil from Sri Lanka. Dr. Jeyalingam was the President of the Ilankai Thamil Sangam from 1995 to 1997, and is currently an active committee member of that organization. He graduated from University of Colombo, in Sri Lanka and came to the United States in 1970 to undergo specialized medical training in the field of otolaryngology. He is a New York State-licensed physician, a Fellow of the American Academy of Otolaryngology and Head and Neck Surgery, and a member of the New York State Medical Society and the Medical Society of Orange County of New York. He has been practicing as a surgeon in New York for the past 19 years and resides in Newburgh, New York. He sues solely in his individual capacity.

9. Plaintiff TAMILS OF NORTHERN CALIFORNIA ("TNC") is a not-for-profit organization that was founded in California in 1994. Approximately 120 individuals are currently members, most of whom are Tam-

ils who were born in Sri Lanka and are either United States citizens or non-citizens. Many members have family and friends still living in Sri Lanka. The TNC's membership includes many highly accomplished professionals in the fields of medicine, science and business. One of the TNC's primary objectives is to facilitate opportunities for Tamils living in the Northern California area to associate with one another and to share their knowledge of Tamil culture, politics, and history. Another of the TNC's primary objectives is to promote the provision of humanitarian assistance to impoverished Tamils of Sri Lanka. It sues on its own behalf and on behalf of its members.

10. Plaintiff WORLD TAMIL COORDINATING COMMITTEE ("WTTC") is an organization headquartered in Jamaica, New York. Its objectives are to advocate in the United States in favor of Tamil self-determination in Sri Lanka and for an end to systemic human rights violations against Tamils living in Sri Lanka. It sues on its own behalf.

11. Plaintiff FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA ("FETNA") is a non-profit corporation headquartered in Chicago, Illinois, which was founded in 1986. It is an umbrella organization whose membership includes 30 Sangams in the United States, including plaintiff Ilankai Thamil Sangam. The term "Sangam" in the Tamil language refers to an association. The FETNA's purposes are to encourage the appreciation of Tamil language, literature, arts, cultural heritage and history, and to encourage friendship among the Tamils and the Tamil Sangams throughout North America and the world. Each of its member Sangams shares these purposes.

The FETNA member Sangams are comprised of United States citizens and non-citizens who are Tamils from all over the world, including India and Sri Lanka. The FETNA sues on behalf of its member Sangams, and their individual members, who seek to support the lawful and non-violent activities of the LTTE.

12. Plaintiff TAMIL WELFARE AND HUMAN RIGHTS COMMITTEE ("TWHRC") is a Maryland association headquartered in Bethesda, Maryland. Founded in 1987, it consists of approximately 100 Tamils. Its members, both United States citizens and non-citizens, are Tamils born in Sri Lanka, and many of its members have family and friends who currently live in Sri Lanka. The TWHRC's primary objectives are to protect the human rights of the Tamils in Sri Lanka and to promote their health, social well-being, and welfare. It sues on its own behalf and on behalf of its members, who seek to support the lawful and non-violent activities of the LTTE.

Defendants

13. Defendant JANET RENO is sued solely in her official capacity as the Attorney General of the United States. She is responsible for prosecuting criminal violations of the federal laws, including the Act.

14. Defendant UNITED STATES DEPARTMENT OF JUSTICE is responsible for prosecuting criminal violations of the federal laws, including the Act.

15. Defendant MADELEINE ALBRIGHT is sued solely in her official capacity as the United States Secretary of State. The Secretary is responsible for designat-

ing "foreign terrorist organizations" under the Act. 8 U.S.C. § 1189.

16. Defendant UNITED STATES DEPARTMENT OF STATE is responsible for designating "foreign terrorist organizations" under the Act. 8 U.S.C. § 1189.

STATUTORY AND REGULATORY FRAMEWORK

17. On April 24, 1996, the Act went into effect. Title III of the Act, entitled "International Terrorism Prohibitions," criminalizes, *inter alia*, the provision of material support or resources to designated organizations.

18. Section 303(a) of the Act, 18 U.S.C. § 2339B, is entitled "Providing Material Support or Resources to Designated Foreign Terrorist Organizations." Pursuant to 18 U.S.C. § 2339B(a), it is a criminal offense, punishable by up to 10 years imprisonment or a substantial fine, or both, to "knowingly provide[] material support or resources to a foreign terrorist organization, or [to] attempt[] or conspire[] to do so[.]"

19. The Act defines "material support or resources" as "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." 18 U.S.C. § 2339A; 18 U.S.C. § 2339B(a) and (g)(4).

20. Section 303(a) of the Act provides that "[t]he Attorney General shall conduct any investigation of a possible violation of [18 U.S.C. § 2339B]. . . . " 18 U.S.C. § 2339B(e).

21. Section 303(a) of the Act authorizes the Attorney General to initiate a civil action in a district court to seek an injunction "[w]henever it appears to the Secretary [of the Treasury] or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of [18 U.S.C. § 2339B]." 18 U.S.C. § 2339B(c).

22. Section 302 of the Act, entitled "Designation of Foreign Terrorist Organizations," establishes the procedures which the Secretary must follow in designating organizations as foreign terrorist organizations. 8 U.S.C. § 1189. It authorizes the Secretary to designate any foreign organization that "engages in terrorist activity (as defined in [8 U.S.C. § 1182(a)(3)(B)]," and whose terrorist activity "threatens the security of United States nationals or the national security of the United States." "Terrorist activity" is defined to include, *inter alia*, any unlawful use of, or threat to use, an explosive or firearm person or property, unless for mere personal monetary gain. 8 U.S.C. § 1182(a)(3)(B)(ii)(V)-(VI). "National security" is, in turn, defined to mean "the national defense, foreign relations, or economic interests of the United States." 8 U.S.C. § 1189(c)(2). Thus, the Act gives the Secretary the discretion to designate any foreign organization that uses or threatens force and whose actions the Secretary deems contrary to our foreign relations.

23. The Secretary's designation for all practical purposes unreviewable. The Act allows a designated organization to challenge its designation within 30 days by filing a suit in the Court of Appeals for the District of Columbia. However, the designation can be supported by classified information *ex parte* and *in camera* to the

Court and not disclosed to the organization; the appeal is decided on the administrative record, and thus affords no opportunity for the organization to submit evidence; and the Secretary's determination that a group's activities threaten the "foreign relations" or "national security" of the United States is non-justiciable, as a court cannot second-guess the Secretary of State on what threatens foreign relations or national security.

24. Once an organization is designated as a foreign terrorist organization, it becomes a crime under 18 U.S.C. § 2339B for anyone to knowingly provide it material support or resources.

25. On October 8, 1997, defendant Madeleine Albright designated 30 organizations, including the PKK and the LTTE, as foreign terrorist organizations under the Act. 62 Fed. Reg. 52,649-51 (October 8, 1997). These 30 organizations are the only organizations that have been designated to date as foreign terrorist organizations under the Act.

26. On November 6, 1997, the LTTE sought judicial review of the Secretary's decision to designate it as a foreign terrorist organization in the United States Court of Appeals for the District of Columbia, pursuant to 8 U.S.C. § 1189. The LTTE maintains, *inter alia*, that it is a national liberation movement seeking to realize the right of the Tamil people to self-determination pursuant to a mandate of the Tamil people and that it is not a terrorist organization under either the laws of the United States or international law. No decision has been rendered on the LTTE's request for judicial review.

27. The PKK considered challenging its designation, but upon consultation with attorneys in the United

States, determined that the judicial review process was illusory, particularly in light of the non-justiciable nature of the Secretary's determinations of "foreign relations" and "national security," and therefore decided not to file suit. It objects, however, to its designation as a "foreign terrorist organization."

THE PKK AND THE LTTE

28. The PKK is a political organization that was formed approximately 20 years ago by the Kurds in Southeastern Turkey with the goal of achieving Kurdish political autonomy or self-determination. For more than 70 years, the Turkish government has subjected the Kurds to gross human rights abuses and discriminatory treatment. The Turkish government refuses to recognize the Kurds as a distinct and separate people with their own language, history, culture, identity, and aspirations. Under Turkish law, one may be convicted of the crime of "separatism" for speaking publicly or publishing in Kurdish, or for expressing sympathy for the concept of Kurdish autonomy and self-determination. The PKK is the principal political organization representing the interests of the Kurds in Turkey and has mass support among the Kurds. The PKK has a political wing, known as the National Liberation Front of Kurdistan ("ERNK"), which engages in political organizing and advocacy both inside and outside of Turkey and provides social services and humanitarian aid to Kurdish refugees from Turkish abuses. The PKK also has a military wing, the Kurdish National Liberation Army ("ARGK"), which has engaged in military combat with Turkish armed forces, but has bound itself to the Geneva Convention and Protocols and has renounced terrorism.

29. The LTTE is a political organization that was formed in 1976 by Tamils in the Northern and Eastern Provinces of Sri Lanka, an area known as Tamil Eelam. Sri Lanka is populated by two major groups—the Tamils, who constitute a numerical minority of the population, and the Sinhalese, who constitute a numerical majority. For decades, the Tamils have been subjected to systematic human rights abuses and discrimination on the basis of ethnicity by the Sinhalese, who have controlled Sri Lanka since the nation gained independence from Great Britain in 1948. The LTTE is the principal political organization advocating for the human rights of the Tamils, and for self-determination for the Tamils of Tamil Eelam. In furtherance of its goals, the LTTE engages in political organizing and advocacy, diplomatic activity, the provision of social services and humanitarian aid, the establishment of a quasi-governmental structure in Tamil Eelam, economic development, defense of the Tamil people from Sri Lankan human rights abuses, and military struggle against the government of Sri Lanka.

PLAINTIFFS' INTEREST IN SUPPORTING THE PKK AND THE LTTE

Humanitarian Law Project ("HLP") and Judge Ralph Fertig

30. Since 1991, the HLP and Judge Fertig have devoted a substantial amount of time and resources to advocating on behalf of the Kurds living in Turkey, and to working with and providing training and other forms of support to the PKK in its efforts to protect the Kurds from human rights abuses. Both Judge Fertig and the

HLP are opposed to the use of terrorism. They have sought to assist the PKK and the Kurds in securing human rights only through non-violent means.

31. Judge Fertig and other HLP board members have traveled to Turkey, Kurdish exile communities in Europe, and other locations, to conduct fact-finding investigations, and have interviewed numerous individuals with first-hand knowledge of the relationship between the Turkish government and the Kurds, including members of the Turkish Parliament, journalists, human rights activists, lawyers, academicians, PKK members, and political prisoners.

32. The HLP and Judge Fertig have published many reports and articles presenting their findings and conclusions, which are generally supportive of the PKK and the struggle for Kurdish liberation. They have concluded that the Turkish government is guilty of committing extensive human rights violations against the Kurds, including the widespread use of arbitrary detentions and torture for persons who merely speak out for equal rights for Kurds or are suspected of sympathizing with those who do, the summary execution of more than 18,000 Kurds, and the destruction of more than 2,100 Kurdish villages. In addition, they have concluded that the PKK is a party to an armed conflict governed by Geneva Conventions and Protocols and, therefore, is not a terrorist organization, as that term is understood in international law.

33. Each year since 1991, the HLP has sent a delegation to the U.N. Commission on Human Rights to advocate for the political interests of the Kurds living in Turkey. The HLP delegation has twice submitted reports to the U.N. that have documented human rights

abuses by the Turkish government against the Kurds and have advocated for the right of the PKK to be granted the protections of the Geneva Conventions and Protocols.

34. Since 1992, Judge Fertig and HLP board members acting as individuals have petitioned members of the United States Congress to support human rights for the Kurds, to curtail United States military support to the Turkish armed forces, and to encourage negotiations between the PKK and the Turkish government. Recently, they have petitioned members of Congress to urge Turkey to release four political prisoners, Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak, all of whom were elected to the Turkish Parliament in 1991 and are now serving 15-year sentences because the Turkish government has found that they are members or supporters of the PKK.

35. Judge Fertig, acting on behalf of the HLP, has participated in international peace conferences and other meetings where he has assisted members of the PKK and its political arm, the ERNK, in attempting to resolve peacefully the conflict between the Turkish government and the Kurds. In addition, Judge Fertig and other HLP representatives have provided training to some members of the PKK and other Kurds on how to present their human rights claims before the U.N. and other public policy-making bodies, including the United States Congress.

36. Since the PKK was designated as a foreign terrorist organization, the HLP and Judge Fertig have been deterred from continuing to assist the PKK to improve conditions for the Kurds living in Turkey. They want to continue to provide the forms of support they

had previously provided, and would like to provide additional support as well. Specifically, they would like to: (1) engage in political advocacy on behalf of the PKK and the Kurds before the U.N. Commission on Human Rights and the United States Congress; (2) provide the PKK and the Kurds with training and written publications on how to engage in political advocacy on their own behalf and on how to use international law to seek redress for human rights violations; (3) write and distribute publications supportive of the PKK and the cause of Kurdish liberation; (4) advocate for the freedom of political prisoners in Turkey, including Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak; (5) assist PKK members at peace conferences and other meetings designed to support a peaceful resolution of the Turkish conflict; and (6) provide lodging to PKK and ERNK members for pruposes of supporting their lawful political advocacy.

37. In addition, the HLP would like to solicit funds for, and contribute cash to, the PKK's political branch, the ERNK, to support the PKK's lawful humanitarian and political activities, and the Kurdish Red Crescent, a group alleged to be affiliated with the PKK that provides medical aid to Kurds, many of whom are PKK members and supporters who have been wounded in battle with the Turkish armed forces.

38. Judge Fertig would also like to solicit funds for, and make cash contributions to the ERNK, the Kurdish Red Crescent, and the international campaign to free political prisoners Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak, solely to promote lawful and non-violent political and humanitarian purposes.

Ilankai Thamil Sangam ("Sangam")

39. The Sangam, as an organization, and many of its members, as individuals, are deeply committed to supporting the humanitarian needs of the Tamils in Sri Lanka, and to that end, would like to solicit and make donations of cash, clothing, food, including prepared foods for infants, and educational materials, to the LTTE to support its efforts to provide humanitarian assistance to the Tamils in Sri Lanka. Among the LTTE efforts that they seek to support are the LTTE-run Chensolai and Kantharupan Orphanages. The Sangam and its members do not seek to support any military or unlawful activities of the LTTE.

40. The fear of criminal investigation, prosecution, and conviction has deterred the Sangam and its members from soliciting and making donations to the LTTE. The Act has also chilled the Sangam and its members from freely engaging in political discussions in which the topic of soliciting and making donations to the LTTE and organizations affiliated with the LTTE is discussed, and in which opinions in support of the LTTE are presented.

Dr. Nagalingam Jeyalingam

41. Dr. Jeyalingam is deeply concerned for the welfare of the Tamils in Sri Lanka, who lack many of the basic necessities of life, including adequate shelter, food, clothing, and medical care. Members of Dr. Jeyalingam's immediate family, including his mother, brothers, and sisters, were displaced from their homes and forced to flee from Sri Lanka to India as refugees in 1983. Prior to October 8, 1997, the date the Secretary

designated the LTTE as a foreign terrorist organization, Dr. Jeyalingam made cash donations to organizations that provided assistance to Tamil refugees in the Northern and Eastern provinces of Sri Lanka. In addition, as a part of his work with the Ilankai Thamil Sangam, he encouraged other Tamil-Americans to provide such assistance.

42. Dr. Jeyalingam disagrees with the Secretary's decision to designate the LTTE as a foreign terrorist organization. He believes that the LTTE plays a crucial role in providing humanitarian aid, social services, and economic development to the Tamils in Sri Lanka.

43. Dr. Jeyalingam wants to support the lawful aud non-violent activities of the LTTE in a number of ways. He would like to donate food and clothing to the Tamil Eelam Economic Development Organization ("TEEDOR"), a branch of the LTTE engaged in economic development activities in Tamil Eelam, including assisting refugees, implementing plans to develop the area's agriculture, forestry, fishing, and industries, and conducting environmental surveys. He would like to donate school supplies, books, and other educational materials to the Tamil Eelam Education Secretariat (TEES), a branch of the LTTE that oversees educational services for the children of Tamil Eelam. He would like to donate cash to the LTTE to help pay for its legal fees and costs in the lawsuit it filed challenging the Secretary's designation of it as a foreign terrorist organization, to support its political advocacy work, including its dissemination of written publications describing the plight of the Tamils in Sri Lanka to Tamil exile communities around the world; and to support its provision of medical and rehabilitative assistance to

Tamil victims of landmine explosions through the White Pigeon Organization. Dr. Jeyalingam only wishes to support humanitarian, social, and political efforts, and does not intend to support the LTTE's military activities.

44. Dr. Jeyalingam believes that there is an urgent need for each of the forms of support that he wishes to provide. However, he is afraid to act upon this interest because he fears that doing so would provoke the United States government to criminally investigate, prosecute, and convict him under the Act for providing material support to a designated organization.

Tamils of Northern California ("TNC")

45. The TNC is committed to assisting the Tamils in Sri Lanka, and would like to support the LTTE's efforts to provide humanitarian assistance. In particular, the TNC and its members would like to donate money, as well as children's supplies, including infant formula, baby food, children's shoes and clothing, school books, and toys, to the orphanages that the LTTE runs, including the Chensolai and Kantharupan Orphanages. The TNC and many of its members wish to make donations to the LTTE's humanitarian efforts as a means of expressing their support for the self-determination of the Tamil people in Sri Lanka. The TNC does not seek to support the LTTE's military activities. The TNC and its members are deterred from providing this support to the LTTE by the threat of criminal prosecution under the Act.

World Tamil Coordinating Committee ("WTTC")

46. The World Tamil Coordinating Committee (WTCC) has distributed LTTE literature throughout the United States since 1987, as part of its founding purpose to advocate in this country on behalf of the human rights and self-determination of the Sri Lankan Tamils. The designation of the LTTE on October 8, 1997 has had a devastating impact on the WTCC's ability to meet its institutional goals and to remain solvent. Many individuals who were receiving LTTE literature from the WTTC prior to that date have asked the WTTC to stop distributing to them because they fear that subscribing to receive LTTE-produced materials could lead to their criminal investigation, prosecution, and conviction under the Act for providing material support to a designated organization. In addition, many of the WTCC's former donors have stopped making contributions out of fear of criminal investigation and prosecution for providing material support to the LTTE. The WTTC does not intend any of its activities to further any illegal ends.

Federation of Tamil Sangams of North America ("FETNA")

47. Since the Secretary designated the LTTE as a foreign terrorist organization on October 8, 1997, many of the FETNA's member Sangams and their respective individual members have complained to the FETNA that they would like to make donations to the LTTE for its humanitarian assistance to Tamil refugees in Sri Lanka, but are afraid of being criminally prosecuted under the Act for doing so. The Act has had a chilling effect on the First Amendment rights of the FETNA

and its member Sangams. Not only are the FETNA's member Sangams afraid to make contributions to the LTTE's humanitarian relief efforts, but the FETNA and its members Sangams have been inhibited from freely engaging in political discourse concerning the LTTE and how to address the critical need for humanitarian assistance of the Tamils in Sri Lanka, because the Act also criminalizes conspiring to support the LTTE. The FETNA's members seek to support only the lawful humanitarian projects of the LTTE, and not its military activities.

Tamil Welfare and Human Rights Committee ("TWHRC")

48. The TWHRC's members are deeply concerned about the destitute Tamil refugees in the war-torn areas of Northeast Sri Lanka who have lost their homes and have had their lives disrupted. The TWHRC as an organization, and many of its members as individuals, consider it a matter of the highest urgency to provide humanitarian assistance to these refugees. The TWHRC would like to make cash donations to the major organizations in Sri Lanka that are providing direct relief, medical and social services to these refugees, including the Tamil Eelam Economic Development Organization ("TEEDOR"). The TWHRC seeks only to support the LTTE's humanitarian efforts and does not seek to support the LTTE's military activities.

49. The enactment of the Act and the designation of the LTTE as a foreign terrorist organization have had a pronounced chilling effect on the First Amendment rights of the TWHRC and its members. The TWHRC and its members are afraid to act upon their desire to

provide cash donations to support the provision of humanitarian services to Tamil refugees in Sri Lanka because they fear that doing so would place them at risk of criminal investigation, prosecution, and conviction. Furthermore, the TWHRC and its members are afraid to discuss freely the subject of providing support to the LTTE, and to organizations that collaborate with the LTTE in providing humanitarian services, for fear that they will be criminally investigated, prosecuted, and convicted for attempting and conspiring to assist a designated organization.

IRREPARABLE INJURY

50. All of the plaintiffs are suffering ongoing irreparable injury to their First Amendment rights, because the Act and the Secretary's designation of the LTTE and the PKK have deterred them from engaging in associational and speech activity that is protected by the First Amendment. This injury is exacerbated by the Act [*sic*] vague and open-ended definition of "material support and resources," and by the Secretary's selective targeting of certain disfavored groups for designation.

51. Plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION

52. The allegations contained in paragraphs 1 through 51 above, are repeated and realleged as though fully set forth herein.

53. Sections 302 and 303 of the Act violate the First Amendment to the Constitution's guarantees of freedom of speech and association and to petition the government for a redress of grievances insofar as it makes it a

criminal offense to provide "material support or resources" to a designated organization absent specific intent to further the organization's unlawful ends.

SECOND CAUSE OF ACTION

54. The allegations contained in paragraphs 1 through 51 above, are repeated and realleged as though fully set forth herein.

55. Sections 302 and 303 of the Act violate the First and Fifth Amendments to the Constitution by granting the Secretary of State effectively unreviewable authority to designate foreign organizations as "terrorist," thereby inviting viewpoint discriminatory targeting of particular groups and their supporters based on their political views.

THIRD CAUSE OF ACTION

56. The allegations contained in paragraphs 1 through 51 above, are repeated and realleged as though fully set forth herein.

57. Sections 302 and 303 of the Act violate the First and Fifth Amendments to the Constitution because its definitions of the terms "material support and resources" and "foreign terrorist organization" are impermissibly vague, failing to afford adequate notice to individuals of what is prohibited, giving government officials unfettered discretion in enforcement, and causing individuals to avoid First Amendment protected activity in order to steer clear of the prohibited conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs seek an order and judgment:

1. Preliminarily and permanently enjoining defendants from criminally prosecuting individuals and organizations under §§ 302 and 303 of the Act for providing material support or resources to a designated foreign terrorist organization absent a specific intent to further the organization's unlawful terrorist activities;

2. Declaring §§ 302 and 303 of the Act unconstitutional because they violate the First Amendment and Fifth Amendments [*sic*] to the United States Constitution by criminalizing the act of providing material support or resources to designated foreign terrorist organizations without requiring a showing of specific intent to further the organization's unlawful terrorist activities;

4.[*sic*] Awarding plaintiffs their costs and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*; and

5. Granting such other and further relief as the Court may deem just and proper.

Dated: March 19, 1998

Respectfully submitted,

/s/ DAVID COLE

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case Nos. 03-6107 ABC (RCx) and
98-1971 ABC (RCx)

HUMANITARIAN LAW PROJECT, ET AL., PLAINTIFFS

v.

JOHN ASHCROFT, AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL., DEFENDANTS

May 11, 2005

DECLARATION OF RALPH DAVID HAYS FERTIG

I, RALPH DAVID HAYS FERTIG, declare as follows:

1. I am the President of the Humanitarian law Project ("HLP"), an organization which is a plaintiff in two above-captioned related lawsuits challenging the constitutionality of a federal statute that criminalizes the provision of "material support" to designated foreign terrorist organizations. The first of these suits, No. 98-1971, was filed in 1998, and challenged the material support statute as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). A related case, No. 03-6107, was filed in August 2003 and challenges the USA PATRIOT Act's amendment to the definition of "material support" to include "expert advice and assistance." I submitted prior declarations in

case No. 98-1971 on March 9, 1998, and in case No. 03-6107 on September 17, 2003 and December 7, 2003. Congress subsequently amended the relevant provisions of the material support statute, 18 U.S.C. §§ 2339A and 2339B, with the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458, § 6603(c)-(f) (Dec. 17, 2004).

2. I attach my prior declarations as Exhibits A, B and C hereto. I submit this declaration to supplement the facts set forth in my prior declarations, and to state some facts and circumstances that have changed since then.

3. The Secretary of State has continued to designate the Kurdistan Workers' Party ("PKK") and the Kurdistan Freedom and Democracy Congress ("KADEK") as "foreign terrorist organizations." On April 4, 2002 (the birthday of the founder of the PKK, Abdullah Ocalan), KADEK (later known as "Kongra Gel"), changed its name back to PKK, the Kurdistan Workers Party.

Political conditions and developments in Turkey

4. The government of Turkey continues to deny many rights to those of its Kurdish residents who seek to nurture or sustain their cultural heritage. Disparities in treatment and protection of Kurds, and restrictions on the rights to free speech or association still oppress the Kurds. Furthermore, Turkey continues to deny equal rights in the economic, social, and political spheres to its Kurdish population. Torture of detainees by the authorities remains a common practice, according to the Human Rights Association of Turkey.

5. The *de jure* acceptance of the Kurds and Kurdish ethnic identity by the Turkish government has not yet been [*sic*] happened: Article 66 of the Turkish Constitution remains the law of the land, which classifies all the citizens of Turkey as Turks. In an incident that sadly illustrates official attitudes, in the city of Mersin on March 21, 2005, thousands of Kurds gathered in the City Square to observe Newroz, the Kurdish New Year. Two youngsters lit a Turkish flag on fire. The incident unleashed a national hysteria, amplified by the official news media, during which the Chief of the Armed Forces stated that the army will fight to its last drop to combat the "so-called citizens" who disrespect the flag—unmistakably a reference to the Kurds.

6. Only a few steps have been taken to placate a European audience that is pushing Turkey to accommodate its Kurds. For example, on June 9, 2004, Turkey, for the first time in its history, allowed limited broadcasting in the Kurdish language. But such broadcasts are restricted to only 30 minutes in Kurmanji dialect and another 30 minutes in Zazaki dialect per week, and the content of the broadcasts is purely historic and contains no discussion of current issues. A few Kurdish language schools have been opened as well, but police surveillance of the schools has intimidated people from attending them.

7. Kurdish Parliamentarians Leyla Zana and Orhan Dogan are again facing trial for their exercise of speech. Zana and Dogan, elected as representatives to the Turkish Grand National Assembly on October 20, 1991, were stripped of their legislative immunity and jailed on March 4, 1994 on the charge of having separatist thoughts and making speeches that encouraged sepa-

ratist aspirations. They were each convicted on December 8, 1994 for 15 years in jail and served until June 9, 2004, when, bowing to pressure from the European Union, Turkey released them. But the Turkish government, arguing that they are not sufficiently repentant for having spoken out, is now seeking to return them to jail to serve the balance of their sentences.

8. As recently as February 8, 2005, the European Court of Human Rights in Strasbourg (set up by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights) censured Turkey for violating the right to free speech of a Kurd, jailed because a book he published was considered separatist Kurdish propaganda. "The tenor of the book was not such as to justify the applicant's criminal conviction," the court ruled, according to a press release. The author, Muzaffer Erdost, now 73, a Turkish national belonging to the Kurdish minority, was jailed for a year in 1997 for his book published a year earlier and relating how extrajudicial persecution had led to bloodshed in the Kurdish town of Sivas in 1978, 1993 and 1996. A public prosecutor had applied to the Ankara State Security Court for an order for the book, called "Three Sivases, in the center of the pressure being exerted for the imposition of a new [Treaty of] Sevres on Turkey," to be seized, saying it contained separatist propaganda representing a threat to Turkish state integrity. The largely Kurdish area of southeastern Turkey has been seeking autonomy, leading to large-scale repression by Turkish authorities of Kurdish militants. (Under the 1920 Treaty of Sevres, part of the post-World War I settlement, the victorious allies promised autonomy for the Kurds of southeastern Turkey [*sic*]. The court ruled that the jail sentence and the

book's confiscation "did not meet a pressing social need and was accordingly not necessary in a democratic society." It said there had been a violation of Article 10 of the European Human Rights Convention (guaranteeing freedom of expression). It acknowledged that passages from the book contained references to people from different ethnic origins and to the founding of a Kurdish state on the collapse of the Republic of Turkey. "However, those references were quotations from articles in the press which could not of themselves justify the interference with the applicants [*sic*] right to freedom of expression," it found. The court also ruled that the plaintiff had been denied the right to a fair hearing "on account of the State Security Courts [*sic*] lack of independence and impartiality." It awarded him 7,500 euros (9,600 dollars) damages plus costs.

9. Extra-judicial killings directed at Kurds still take place. Mardin Ahmet and his son, Ugur Kaymaz, an eleven year old child, were killed by four policemen in Mardin. The child, dressed in his slippers, was shot in the back on suspicion of being a terrorist. The policemen have been reinstated and reassigned.

Recent activities of Humanitarian Law Project

10. In August, 2004, I was called and invited to meet with A. Engin Ansay, the Consul General of the Republic of Turkey. The meeting was set for Thursday, August 12, 2004, and I arranged for the executive director of HLP, Lydia Brazon, to join me. We met on that date, at 11:00 a.m. with Consul General Ansay and his Assistant in the office of the Consulate General of the Republic of Turkey at 4801 Wilshire Blvd., Suite 310, in Los Angeles, California, 90010. Mr. Ansay told Ms. Brazon

and me that at a regular session of the United Nations Human Rights Subcommission in Geneva Switzerland, two individuals who identified themselves as delegates of the Humanitarian Law Project/International Educational Development (HLP/IED)[1] spoke out against actions by the Turkish government in the oppression of Kurds within the boundaries of the Republic of Turkey. Mr. Ansay claimed that through his access to classified files of both the Turkish and the United States government, he was assured and had determined that those individuals were members of the Kurdistan Workers Party (PKK), and that having them speak as delegates of the HLP/IED discredited our organization. He promised to give Ms. Brazon and me redacted copies of the reports spread before him, and to which he referred, which made such allegations. He never did.

11. Mr. Ansay's statements were clearly understood as a warning to HLP/IED that he was watching our organization and, should any link be shown between the PKK and HLP/IED, he would alert the authorities of the United States government.

12. The credentialing of our delegates is undertaken by the headquarters office of HLP/IED in Los Angeles, California, on forms signed by Ms. Brazon and myself and sent to the United Nations headquarters office in New York, N.Y. Those persons named by Consul General Ansay were never credentialed by either Ms. Brazon nor myself. However, Karen Parker, HLP/IED senior delegate to the United Nations Human Rights Subcommission, does occasionally deputize personnel to assist her in discharging her duties for the organization.

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[1] The relationship between HLP and IED is described in detail in my earlier declaration of March 9, 1998 at ¶¶ 4-5.

13. I promptly contacted Ms. Parker, and asked her if she had deputized such persons, and she assured me that she had not. However, in an abundance of caution, I issued notice that nobody may speak for HLP/IED without clearance from our Los Angeles office, and that such clearance would have to include a good faith effort to determine if there were any ties between a prospective delegate under the aegis of HLP/IED and the PKK.

14. However, since it is literally impossible for HLP/IED to determine whether any person actually belongs to or owes allegiance to the PKK, and since the law as I understand it would penalize members of HLP/IED for giving delegate status to one who holds membership or owes allegiance to the PKK, the effect of Consul General Ansay's warning to our organization is to block us from deputizing anyone to speak out against the oppression of the Kurds by the Turkish government.

15. The fear of being charged with violations of the material support statutes or conspiracy to commit such violations has left the leadership of HLP/IED unsure of how to screen speakers at events sponsored or organized by HLP/IED to prove that they are not affiliated with any designated foreign terrorist organizations. Because of this fear of prosecution, our organization is inclined to not permit people who cannot be effectively screened speak at events sponsored by HLP/IED in the future.

16. Because of the broad language of the law, we have also felt it necessary to request resumes and references for speakers at HLP/IED events and individuals who will otherwise be associated with HLP/IED, even where there is no reason whatsoever to suspect their involvement in terrorist activity.

17. Only recently I withheld credentialing specific individuals, including at least one who had previously spoken in our behalf. In March 2005, I withheld credentials for Karen Nurcan Gulabi and Deniz Alkan; we had previously allowed Mr. Alkan to speak for HLP.

18. HLP has also been making efforts on behalf of Kurds in Iraq—advocating independence, autonomy, federated status, self-government in Kirkuk, and so forth. I attended conferences for these purposes in San Diego and Los Angeles during 2004. There are allegations that Kurdish forces in Iraq are allied with th PKK, which also chills our speaking out in behalf of the Kurds of Iraq.

Activities HLP wishes to carry out, but is deterred from

19. HLP/IED has conducted no training nor provided any assistance of any sort since and due to the vacating of the injunction. Because of the provisions of the revised material support statute, HLP/IED is afraid to engage in such activity, even though its activities would be limited to providing training for and assistance in peaceful human rights alternatives to the violence to which Kurds are subjected; providing assistance and training in peacemaking negotiations; and assisting the PKK in appearing before national and international representative bodies such as the United Nations Human Rights Subcommission, the Council of Europe, the United States Congress, and international human rights conferences. The training, advice, and assistance that HLP wishes to carry out might be construed as providing services, training, expert advice or assistance, or personnel acting under "direction and control" of PKK

or other banned groups, and therefore we risk criminal prosecution if we undertake it.

20. In particular, HLP members and I would like to be able to provide training and expert advice and assistance to Kurds, some of whom are members and/or supporters of PKK, on how to bring claims and appeals of Kurds before the UN and other policy making bodies, as described in my March 9, 1998 declaration at ¶¶ 17-18. However, we are afraid to do so because of the material support statute's prohibitions on providing "services," "personnel," "expert advice and assistance," and of course "training" (even when the latter term is limited to "a specific skill as opposed to general knowledge, 18 U.S.C. § 2339A(b)(2)). We have established and specialized expertise in the area of human rights advocacy, and thus our provision of assistance and training would appear to fall within the still-broad definitions of the material support statute.

21. As described in my March 9, 1998 declaration, ¶¶ 19 *et seq.*, HLP/IED would like to solicit funds for and make cash contributions to the political branch of the PKK (the National Liberation Front of Kurdistan, or ERNK), the Kurdish Red Crescent (Heyva Sor a Kurdistane), and also for the lawful, non-violent activities of the PKK and its successor and affiliate groups. However, HLP/IED and I are afraid to solicit or provide funds for any of these organizations because the statute makes it a crime to provide "material support or resources" to a designated foreign terrorist organization.

Conclusion

22. HLP and its members do not support terrorism, and do not intend to support any unlawful or violent activites of the PKK and its successor and affiliate groups. We seek to support only those groups' lawful, nonviolent activities.

23. HLP/IED and I have been deterred from providing any such aid that might be characterized as "material support or resources" since the enactment of the December 17, 2004 amendments to sections 2339A and 2339B, and, indeed, since the enactment of the USA PATRIOT Act. Virtually everything we have done or wish to do in support of the PKK and its successor and affiliate groups to encourage them to pursue peace and human rights advocacy could be characterized as "material support[.]" HLP/IED and I would continue to provide support to the lawful, nonviolent activities of the PKK and its successor and affiliate groups, as soon as practicable after this Court issues an injunction barring the government from prosecuting us under the "material support" statute for supporting lawful, nonviolent activities of these groups.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ RALPH FERTIG
RALPH DAVID HAYS FERTIG

Executed on May 11, 2005
Los Angeles, California

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No. 03-6107 ABC (RCx)

HUMANITARIAN LAW PROJECT, ET AL., PLAINTIFFS

v.

JOHN ASHCROFT, AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL., DEFENDANTS

Dec. 7, 2003

DECLARATION OF RALPH DAVID HAYS FERTIG

I, Ralph David Hays Fertig, declare that the following statements are true to the best of my knowledge, information, and belief:

1. The Humanitarian Law Project (HLP) and I are plaintiffs in two suits challenging the constitutionality of a federal crime that proscribes the provision of "material support" to designated foreign terrorist organizations. This crime was put into law by the Anti-terrorism and Effective Death Penalty Act of 1996. The first of these suits was filed in 1998, and on March 9, 1998, I filed a declaration under penalty of perjury in support of that suit ("1998 Declaration"). The instant suit is the second of these suits, and it challenges the USA PATRIOT Act amendment to the definition of "material support" to include "expert advice and assistance." The instant suit was filed in August 2003, and on September

17, 2003, I submitted a declaration under penalty of perjury in support of the pending motion for summary judgment.

2. I submit this declaration to ensure that the record in this case includes the facts set forth in my 1998 Declaration, and to state some facts and circumstances that have changed since then. The 1998 Declaration, which is submitted in its entirety as Exhibit 1, clearly establishes the expertise of the HLP and myself in international human rights, peacemaking, and advocacy before official bodies. As described in that declaration, the HLP is a longstanding non-profit organization with an international focus that is dedicated to protecting human rights and promoting the peaceful resolution of armed conflicts. The HLP has consultative status to the United Nations and regularly participates as a credentialed representative in meetings of the UN Subcommission on Human Rights in Geneva, Switzerland. It also advocates before the United States Congress. In addition, the HLP conducts fact-finding, and writes reports, on human rights problems all over the world. As the President of the HLP since 1989, I have personally participated in the HLP's advocacy and fact-finding work, including work in support the Kurds in Turkey, and I have assisted with the publication of the HLP's report, Armed Conflict in the World Today, which was last updated and issued in 2000.

3. The Secretary of State has continued to designate the PKK as a "terrorist organization," and states that it is also known as KADEK (Kurdistan Freedom and Democracy Congress), among other names. While the Humanitarian law Project and I dispute the designation of the PKK and its successor, KADEK, as terrorist organi-

zations, I will refer herein to these organizations, designated by the Secretary of State as terrorist, collectively as "the PKK and its successor or affiliate organizations."

4. In 2001, I retired from my position as an Administrative Judge for the United States Equal Employment Opportunity Commission, and in January, 2003, I joined the faculty of the Graduate School of Social Work at the University of Southern California where I am now a full-time clinical Professor, teaching Social Welfare history, Philosophy, and Policy, Industrial Social Work, and Law and Social Work.

5. During the period when the HLP and I were protected by this Court's injunctions, and until the enactment of the USA PATRIOT Act, both the HLP and I continued to provide support to the PKK or its successor or affiliate organizations in the following ways:

(a) The HLP delegation to the United Nations Human Rights Subcommission regularly included persons who belonged to the PKK or its successor or affiliate organizations. HLP advised such persons and assisted them in participating in the proceedings.

(b) The HLP staff helped persons who belonged to the PKK or its successor or affiliate organizations to make presentations to the UN Subcommission on Human Rights through "Round Tables," Information Meetings, and papers addressing human rights issues and the oppression of Kurds in Turkish occupied Kurdistan.

(c) The HLP worked with Special Rapporteurs of the UN Subcommission on Human Rights in behalf

of human rights for the Kurds of Turkish occupied Kurdistan.

(d) The HLP and I continued to provide training to persons who belonged to the PKK or its successor or affiliate organizations to help them bring their claims and concerns before legislative bodies and the United Nations.

6. As stated in my September 17, 2003 declaration, the HLP and I have been deterred from providing any such aid that might be characterized as "expert advice or assistance" since the enactment of the USA PATRIOT Act. Virtually everything we have done in support of the PKK and is successor and affiliate groups to encourage them to pursue peace and human rights advocacy could be characterized as "expert advice or assistance."

The HLP and I would continue to provide such assistance to the PKK and its successor and affiliate groups, now designated as "terrorist" by the Secretary of State, as soon as practicable after this Court issues an injunction barring the government from prosecuting as under the "expert advice or assistance" prong of the "material support" statute. We are committed to continuing to provide assistance for human rights of the Kurds in Turkey, and continue to believe that it is our constitutionally-protected right to do so.

I declare, under the penalty of perjury, that the foregoing is true and correct.

/s/ (ORIG FILED AND SIGNED ON 12/7/03)
RALPH DAVID HAYS FERTIG

Dated: December 7, 2003
Los Angeles, California

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No. 03-6107 ABC (RCx)

HUMANITARIAN LAW PROJECT, ET AL., PLAINTIFFS

v.

JOHN ASHCROFT, AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL., DEFENDANTS

Sept. 17, 2003

DECLARATION OF RALPH DAVID HAYS FERTIG

I, Ralph David Hays Fertig, declare that the following statements are true to the best of my knowledge, information, and belief:

1. I am the President of the Humanitarian Law Project (HLP). The HLP and I are plaintiffs in this action filed in August 2003, and I submit this Declaration on our behalf. The HLP and I are also plaintiffs in a related lawsuit, filed in March 1998, in we challenge the constitutionality of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) insofar as it makes it a crime to provide "material support or resources" to the lawful activities of designated foreign terrorist organizations, including the Kurdistan Workers' Party (PKK). On October 8, 1997, the United States Secretary of State designated the PKK as a foreign terrorist orga-

nization under the AEDPA, and it has remained designated since that time.

2. In June 1998, Judge Audrey Collins issued an injunction in the first of these suits that bars the government from prosecuting the HLP or me under the challenged material support provision for providing "personnel" and "training" to the PKK. On October 26, 2001, however, the challenged law was amended by the USA PATRIOT Act to make it a crime to provide material support to a designated foreign terrorist organization in the form of "expert advice or assistance."

3. Between the time the injunction was issued in June 1998 and the time the law was amended in October 2001, the HLP and I provided support to the PKK that could be construed as falling within the rubric of "personnel" and "training," as well as under the rubric of "expert advice or assistance." These activities included advising Kurds and Kurdish groups on the latest developments in the evolution of international human rights law, the procedures for seeking review by the newly established International Criminal Court, and advocacy of the rights of Kurds before the Human Rights Subcommission of the United Nations. Since the challenged law was amended to include "expert advice or assistance" as a form of "material support," however, the HLP and I have refrained from providing any support to the PKK out of fear that doing so might subject us to criminal prosecution for providing "expert advice or assistance" to the PKK. We very much wish, however, to provide the following support to the PKK, which could be characterized as "expert advice or assistance": expert advice and assistance in human rights advocacy, peacemaking negotiation skills, and advocating their

message to legislative bodies throughout the world, including the United States Congress.

4. I firmly believe that the HLP and I have a right under the First Amendment to provide expert advice and assistance towards the lawful and peaceful goals of the PKK and Kurds who are members of tile PKK in the manner described in this declaration. However, we do not wish to run the risk of being subjected to a criminal prosecution under the challenged law. For this reason, we are refraining from engaging in these activities, and we are requesting that this court issue a declaratory judgment, on an expedited basis, that the USA PATRIOT Act amendment to the material support law barring the provision of "expert advice and assistance" is unconstitutional insofar as it makes it a crime for us to provide expert advice or assistance to the PKK in the manner described in this declaration.

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 17th day of September, 2003.

/s/ RALPH D.H. FERTIG
RALPH DAVID HAYS FERTIG

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No. 98-1971 (RCx)

HUMANITARIAN LAW PROJECT, ET AL., PLAINTIFFS

v.

JANET RENO, AS ATTORNEY GENERAL
OF THE UNTIED STATES, ET AL., DEFENDANTS

Mar. 9, 1998

DECLARATION OF RALPH D.H. FERTIG

I, Ralph David Hays Fertig, declare that the following statements are true to the best of my knowledge, information, and belief:

1. I am a citizen of the United States of America, where I was born, raised, and educated. I am currently employed as an Administrative Judge for the United States Equal Employment Opportunity Commission. My professional careers and my extra-curricular activities span more than half a century of work focused on human rights in the United States, as well as abroad. Before becoming a lawyer, in 1980, I was a social worker, sociologist, city planner, college lecturer, writer, consultant, and agency executive. From June 1988, until I was appointed as an Administrative Judge in October, 1994, I was the Supervising Trial Attorney for the EEOC in Los Angeles. For eight years prior thereto, I

was an attorney in private practice, focusing on civil rights litigation. My resume is attached hereto and incorporated fully herewith. My home address is: 927 Thayer Avenue, Los Angeles, California 90024.

2. I am currently the President of the International Educational Development Inc./Humanitarian Law Project (hereinafter Humanitarian Law Project or HLP). I have been a member of the Board of the HLP since 1989. I have personally participated in the HLP's delegations to Turkey, El Salvador, Mexico, and the United Nations Human Rights Commission in Geneva, Switzerland. Both the HLP and I are unalterably opposed to all acts of terrorism.

3. I submit this declaration on behalf of the HLP and on my own behalf, in support of a lawsuit challenging the constitutionality of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) insofar as it makes it a crime to provide "material support or resources" to the lawful activities of designated foreign terrorist organizations, including the Kurdistan Workers' Party (PKK). On October 8, 1997, the United States Secretary of State designated the PKK as a foreign terrorist organization under the AEDPA. On information and belief, the PKK vigorously disputes the designation. It has renounced terrorism, has twice announced a unilateral cease fire, committed itself to be bound by the Geneva Protocols, and in recent years has conducted itself in keeping with them. After learning of the designation of the PKK as terrorist, I pursued legal options with attorneys in the United States for challenging it. However, I could not find a lawyer willing to represent the PKK within the thirty day window provided by the law. I reached the PKK command through a

journalist who advised them that under the terms of the AEDPA, it would likely not be allowed to review the government's file on which such designation was based. The lawyers I consulted and the PKK command each concluded that such challenge would be futile and even if an attorney could be engaged, it would be too costly for the PKK to pursue.

THE HLP'S MISSION AND THE WORK IN WHICH IT IS ENGAGED, INCLUDING ITS EFFORTS TO SECURE PEACE IN TURKISH OCCUPIED KURDISTAN

4. The HLP is a non-profit organization recognized under the California Franchise Tax Board which holds status under the United States Internal Revenue Code Section 501(c)(3). The International Educational Development, Inc. (IED) was formed in the 1950's by a group of Jesuit Fathers for charitable and educational purposes under Section 501(c)(3) of the United States Internal Revenue Code to serve as the secular arm of their projects overseas and to help them conduct non-sectarian work to aid schools, hospitals, and impoverished third world communities. As a non-profit corporation, the IED contracted with the United States Agency for International Development to secure and distribute development materials, including military surplus trucks, lumber, and building supplies, to various schools, hospitals, and projects including, but not limited to, Jesuit missions in the Third World. The IED was chartered as a Non-Governmental Organization ("NGO") of the United Nations by Dag Hammarsjold with consultative status to the United Nations Commission on Human Rights, a status that it hold to this day. In approximately 1985, the Humanitarian Law Project was formed, ini-

tially as a component of the Archbishop Oscar Romero Relief Fund, founded by Sister Pat Krommer, C.S.J., of the Sisters of St. Joseph Carondolet.

5. In approximately 1986, the Humanitarian Law Project established itself as a private non-profit organization with its own Board of Directors. In 1989, the IED absorbed the Humanitarian Law Project into its operation, and the members of the Board of Directors of the HLP were elected to the Board of Directors of the IED. The combined HLP organization is currently headquartered at 8124 West Third Street, Suite 105, Los Angeles, California, 90048.

6. The HLP is dedicated to protecting human rights and promoting the peaceful resolution of armed conflicts and world-wide compliance with humanitarian law and human rights law. Advocacy for the rights of people oppressed by the governments of lands they occupy is at the very heart of the HLP's function and purpose. The HLP has consultative status to the United Nations and regularly participates in meetings of the United Nations Commission on Human Rights in Geneva, Switzerland. Its delegations to the United Nations have included volunteer human rights lawyers and activists from the United States, Bosnia, El Salvador, Mexico, Japan, Russia, Sri Lanka, Kurdistan, and other nations. They have long been in the forefront in advocating peaceful resolution of armed conflict situations. The HLP has established an Advisory Board, a Law Commission, a Social Science Commission, a Medical Commission, and various projects on which other volunteers participate. The HLP's Board of Directors includes lawyers, academicians, businessmen, clergy, writers, producers, and a member of the House of

Lords of Great Britain. The organization's Commissions and Projects are similarly constituted, and include a several elected officials, including a member of the Mexican Senate and a delegate to the South Korean National Assembly, actors and human rights activists.

7. The HLP regularly sends delegations to observe and report on human rights issues in locations across the globe, including Turkey, Mexico, Guatemala, El Salvador, Nicaragua, and Sri Lanka. Each year, an HLP team, led by Karen Parker, Esq., participates in the meetings of the United Nations Human Rights Commission in Geneva, Switzerland. Karen Parker, who is based in San Francisco, California, is joined by other HLP delegates from the United States and from other nations, including Turkey, Russia, Bosnia, Japan, Sri Lanka, Mexico and El Salvador.

8. Most armed conflicts today take place within national boundaries and it is on such conflicts that the HLP focuses much of its work. Civil wars, as defined by Article I of Protocol Additional II to the Geneva Conventions, involve armed conflict between government armed forces and the armed forces of opposition groups under responsible command and in control of sufficient territory to enable them to carry out sustained and concerted military operations. Where civil wars exist, all customary humanitarian law of civil wars (Common Article 3 of the Geneva Conventions) apply and, where applicable, Protocol Additional II to the Geneva Conventions, applies. The HLP's 1997 report, Armed Conflict in the World Today, identifies civil wars or wars of national liberation in Acheh, Afghanistan, Angola, Armenia, Azerbaijan, Bosnia- Herzegovina, Bougainville/Papua- New Guinea, Burma, Burundi, Cambodia,

Chechnya/Russian Federation, Croatia, Cyprus, East Timor, Georgia, Guatemala, Iran, Iraq, Israeli Occupied Territories and Southern Lebanon, Kashmir, Liberia, Mexico, Moluccas, Rwanda, Sierra Leone, Somalia, Sri Lanka, Sudan, Tajikstan, Tibet, Turkey, Uganda, Western Sahara, and Zaire) [*sic*]. In addition, it identifies sixteen nations that are plagued with violent social unrest.

9. In contrast, there are only five "nascent" international conflicts. Thus, the peace-seeking activities of the HLP primarily require attention to conflicts that take place within national boundaries.

10. Since 1991, the HLP has expended a substantial portion of its resources in efforts to secure peace in Turkish occupied Kurdistan. The HLP's delegates to the United Nations have consistently advocated for the right of the PKK to be granted the protection of the Geneva Conventions and Protocols. In addition, the HLP's Board and Advisory Board members have written to, and met with, members of the United States Congress to request Congressional support for the rights of the Kurds in Turkey to assert their ethnic heritage and speak their own language; to be free from arbitrary arrest and detention, torture, and summary execution and to be allowed to assemble, form groups and associate with—among others—the PKK. HLP's Board and Advisory Board members and I have also urged members of Congress to encourage negotiations between the leaders of the PKK and the Turkish government; and to fulfill the promise made by President Woodrow Wilson in his 14 point peace plan following World War I, i.e., to allow the Kurds in Southeast Anatolia to determine their own

destiny through a plebiscite in the region that would be respected by Turkey.

POLITICAL ADVOCACY IN BEHALF OF THE KURDS AND THE PKK BEFORE THE UNITED NATIONS AND THE UNITED STATES CONGRESS

11. On behalf of the HLP and in my individual capacity, I have devoted a considerable amount of time and resources to travelling, studying, writing, and reporting upon the denial of human rights to the Kurds in Turkey. In 1991, I first visited Turkey to study the plight of the Kurds. During this visit and subsequent visits to Europe, I interviewed members of the Turkish Parliament, journalists, human rights activists, lawyers, academicians, and PKK members and other individuals with first hand experience in the struggle of the Kurdish people to secure acknowledgment of their ethnic heritage and the right to express it in Turkey. In addition, I secured testimony from persons who were held in Turkish prisons where they had been beaten, tortured, and hung by their wrists, had electrical prods applied to their genitalia, and were harshly punished merely because they had spoken or written in behalf of equal rights for the Kurds. I also obtained evidence of the presence of the PKK and its affiliated military wing, the Kurdish National Liberation Army (ARGK) within the political boundaries of the state of Turkey, of its maintenance of a command structure, and of its willingness and capacity to be bound by the Geneva Protocols and Conventions and by international humanitarian law.

12. From my visits to Turkey and to Europe where I have met with Kurds in the diaspora, I have learned

that there is massive popular support among the Kurdish people for the PKK and its political wing, the National Liberation Front of Kurdistan (ERNK). The PKK has been the driving force behind most of the expressions by the Kurdish people to seek human rights in Turkey since 1984. The PKK has broad popular support throughout the predominantly Kurdish region of Southeast Turkey and in the Kurdish diaspora, which is concentrated in Western and Northern Europe.

13. On July 10, 1991, I wrote a report for the HLP which concluded that the PKK met all of the stated criteria entitling it to the protection of the Geneva Conventions and Protocols. This report, which was submitted to the United Nations Human Rights Commission on two separate occasions, documents that the government of Turkey denies human rights to the Kurds and violates international humanitarian law as framed by the Geneva Protocols additional to the Geneva Conventions of 12 August 1949. The PKK and ERNK have used the report, including updated versions of it, to support their claims of Turkey's violation of human rights, and attorneys representing captured members of the ARGK in Turkish courts have used the report in seeking the protection of the Geneva Protocols.

14. In each year since 1991, the HLP delegation to the United Nations Human Rights Commission has advocated the binding of Turkey to the Geneva Conventions and Protocols, which would extend some protections for non-combatants in Turkish occupied Kurdistan as well as to the PKK and Turkish armed forces. In 1992, I joined Karen Parker in leading the HLP's delegation to the UN Human Rights Commission in Geneva and in speaking out for recognition of the applicability

of the Protocols and Conventions to the armed conflict in Turkish occupied Kurdistan. In the years prior and subsequent to 1992, Karen Parker has led the HLP delegations to the UN Human Rights Commission, and she has consistently urged that same cause.

15. Since 1992, I, on behalf of the HLP and in my individual capacity, along with many other HLP Board and Advisory Board members, have regularly met with members of the United States Congress and their staff to urge them to support human rights for the Kurds in Turkey and to help secure a peaceful resolution of the conflict between the Turkish government and the Kurds. We have provided members of Congress with documentation of the human rights abuses committed by the Turkish government and its armed forces against the Kurds. We have urged Congress to curtail United States military supplies for the Turkish armed forces, as those supplies are largely used to oppress the Kurds and to battle the PKK.

16. The HLP and I would like to continue to offer our services to advocate on behalf of the rights of the Kurdish people and the PKK before the United Nations and the United States Congress. However, we are afraid to do so because of our concern that, under the AEDPA, our advocacy could constitute the criminal provision of "material support or resources" to a designated foreign terrorist organization. "Material support or resources" is defined broadly under the AEDPA to include the provision of "personnel." The AEDPA further makes it a crime to "attempt[] or conspire[]" to provide "material support or resources" to a foreign terrorist organization. We are concerned that our contribution of personnel and resources to advocate for the PKK may violate

the law, but we believe it is our First Amendment right to do so.

TRAINING THE KURDS AND THE PKK TO ADVOCATE BEFORE THE UNITED NATIONS AND NATIONAL GOVERNMENTS

17. Since 1992, Karen Parker and I, on behalf of the HLP, have provided training to Kurds, some of whom are members and supporters of the PKK, on how to bring the claims and appeals of the Kurds and the PKK for human rights before the United Nations and other public policy making bodies, including the United States government and other national governments. We have provided such training in Brussels, Rome, Geneva, Los Angeles, and other cities in the United States. I have provided training to members of the *Kurdistan Parliament in Exile* on international human rights law and on approaches to take before other governmental bodies, and in both my individual capacity and for HLP, I would like to be able to continue providing this training. The *Kurdistan Parliament in Exile* is a parliamentary body, based in Brussels, Belgium, consisting of representatives elected by Kurds throughout the diaspora. Among those elected, there may be members of the PKK, and in its work, the *Kurdistan Parliament in Exile* may cooperate with the ERNK in lawful campaigns for the rights of all people in Turkish occupied Kurdistan to be free from oppression, and in seeking peaceful solutions to the current conflict there.

18. The HLP and I would like to continue providing training to the Kurds and the PKK. However, we are afraid to do so lest we be found guilty of a criminal violation of the AEDPA. The AEDPA broadly defines the

provision of "material support or resources" to a designated foreign terrorist organization to include the provision of "training."

SOLICITING FUNDS FOR, AND MAKING CASH CONTRIBUTIONS TO THE LAWFUL ACTIVITIES OF THE PKK AND THE KURDISH RED CRESCENT

19. The HLP would like to solicit funds for and make, cash contributions to support the non-violent political work that is being performed by the PKK's political branch, the ERNK, as well as the lawful, non-violent activities of the PKK, including the PKK's provision of humanitarian relief to Kurds and Kurdish refugees.

20. The HLP would also like to solicit funds for, and make, cash contributions to, *Heyva Sor a Kurdsistane* (the Kurdish Red Crescent), a group that provides medical aid to Kurds, many of whom are PKK members and supporters, who have been wounded in battle with the Turkish Armed Forces. The Kurdish Red Crescent is considered by the Turkish government to be affiliated with, and a front organization for the PKK. The Kurdish Red Crescent is not recognized by the International Committee of the Red Cross, which relies upon the Turkish Red Crescent exclusively to provide medical aid to persons in Turkish occupied Kurdistan. Under the AEDPA, the Kurdish Red Crescent's aid to wounded members of the ARGK may be construed as aid to the PKK.

21. In my individual capacity, I would like to solicit funds for, and make a cash contribution to the ERNK to

support its efforts to provide humanitarian relief to Kurdish refugees who have been displaced from their homes by the Turkish armed forces and helping them find sanctuary, housing, food, jobs, material and moral support in the diaspora and to organize lawful popular and political support for the rights of the Kurds to be free from oppression by the Turkish armed forces and to be granted human rights in Turkish occupied Kurdistan.

22. I would also like to solicit funds for, and make a cash contribution to, in my individual capacity, the Kurdish Red Crescent, so that it can continue to provide medical assistance to Kurds, including PKK members and supporters, who have been wounded in battle with the Turkish armed forces.

23. However, the HLP and I are afraid to solicit funds for, or provide funds to, the PKK, or any organization that may be affiliated with the PKK or the Kurds, because the AEDPA makes it a crime to provide "material support or resources" to a designated foreign terrorist organization.

POLITICAL ADVOCACY IN BEHALF OF AND SOLICITATION OF FUNDS FOR LEYLA ZANA, HATIP DICLE, ORHAN DOGAN, AND SELIM SADAK

24. On behalf of the HLP and in my individual capacity, I have participated in the international campaign to free Leyla Zana, the first Kurdish woman elected to the Kurdish Parliament, and Hatip Dicle, Selim Sadak, and Orhan Dogan. Leyla Zana was elected in October, 1991, along with Hatip Dicle, Selim Sadak, and Orhan Dogan, all four as representatives of the Social Demo-

cratic Populist Party (SHP). While in office, these four resigned from the SHP and joined the People's Labor Party (HEP). In 1993, HEP was closed down by the Turkish government under charges of "separatism." Leyla Zana and the other three deputies then joined the newly formed Democracy Party (DEP). On March 2, 1994, Ms. Zana's parliamentary immunity and that of the three other deputies was lifted and they were all arrested and held incommunicado for 12 to 14 days before being committed to prison. Detention unsupervised by a judge constitutes a breach of Article 5 of the European Convention for the Protection of Human rights and Fundamental Freedoms. On November 26, 1997 the European Court of Human rights ruled that their incommunicado detention was unlawful and breached Turkey's Commitments under the Convention. The four deputies were charged with aiding the PKK and brought to trial at Ankara State Security Court on August 3, 1994.

25. The testimony connecting them to the PKK was found by *Amnesty International* to be "highly suspect . . . obtained from people who themselves faced prosecution, but who had turned state's evidence in return for a lighter punishment, or from people who later retracted their statements claiming that these had been extracted under torture." (in *Turkey: The colours of their clothes: parliamentary deputies serve 15 years' imprisonment for expressions of Kurdish political identity*, Amnesty International, December, 1997). Amnesty International has named all four deputies "Prisoners of Conscience." *Id.* On December 8, 1994, Ms. Zana and the three other deputies were convicted by the Turkish courts of membership in the PKK, and sen-

tenced to 15 years in prison. The HLP and I have solicited money for the campaign to free Ms. Zana. In addition, I have written articles and met with members of the United States Congress to encourage support for her release from imprisonment in Turkey.

26. However, upon learning that the PKK was listed as a terrorist organization on October 8, 1997, I have become apprehensive about soliciting money and advocating for the freedom of persons convicted of being members of the PKK, lest my actions amount to the crime of providing "material support or resources" to a designated foreign terrorist organization under the AEDPA.

TRAVEL TO TURKEY AND PARTICIPATION IN PEACE CONFERENCES WITH KURDS AND THE PKK

27. On behalf of the HLP and in my individual capacity, I have traveled extensively to participate in peace conferences with the Kurds and the PKK. In 1994, I traveled to Brussels, Belgium to meet with members of the Kurdistan Government in Exile and to participate in an international conference seeking peace in Turkey. I participated together with members of the PKK and its political arm, the ERNK in developing strategies and programs to help bring peace to Turkish occupied Kurdistan.

28. In April, 1997 I traveled to Rome to participate in an international conference, Pace in Turchia, with members of the PKK and other Kurdish groups, along with representatives of various sectors of Turkish society and delegates from other nations, to try to build a dialogue with these factions. I met with persons who

are members of the PKK and drafted a statement on their behalf seeking a peaceful resolution of the current conflict in Turkish occupied Kurdistan. Following the Rome conference, I traveled to London where I met with Kurds in the diaspora. I advised them of their rights under international law and provided them with some of my writings, as well as some training in advocating the cause of Kurdish human rights and liberation.

29. I have been asked to attend other conferences, meet with groups of Kurds in the diaspora, and revisit Turkey. However, since the PKK was cited as a "terrorist organization" on October 8, 1997, I have been afraid to attend any conferences or meetings at which PKK members or supporters would be present. I am concerned that by providing advice and assistance to members and supporters of the PKK, I could be charged with providing "material support or resources" in the form of "personnel" under the AEDPA.

THE WRITING OF PUBLICATIONS IN SUPPORT OF KURDISH LIBERATION AND THE PKK

30. Since 1991, I have written many articles in both my individual capacity and on behalf of the HLP documenting the state of civil conflict in Turkish occupied Kurdistan; the widespread use of arbitrary detention and torture for persons who merely spoke out for equal rights for Kurds or were suspected of sympathizing with those who do, including attorneys, doctors, and clergy who provided assistance to the Kurds and writers who published news of the oppression of the Kurds; the summary execution of more than 18,000 Kurds; and the wholesale destruction of some 2,400 Kurdish villages.

Some of my articles have been reprinted in a variety of publications and translated into German, French, Turkish, Kurdish, and other languages. I do not know whether or not any of the publishers are connected to the PKK, but my articles certainly document a situation that the PKK seeks to bring to world attention, namely that Kurds are denied fundamental human rights by the government and armed forces of Turkey.

31. I am opposed to the use of violence and wish to assist the Kurds and the PKK in using non-violent means to secure human rights. I believe that it is vital for the Kurds and the PKK to learn of developments in international law, including decisions under the United States Torture Victim Protection Act and Alien Tort Claims Act which may help them combat torture, summary executions, false imprisonment, and disappearances in Turkey through the use of law.

32. I would like to continue writing articles about the Kurdish situation in Turkey and to write about developments in international law that may benefit the Kurds and the PKK. However, I am apprehensive and afraid to do so, lest such an act be construed as the criminal provision of "material support or resources" in the form of "personnel" or "training" to a designated foreign terrorist organization.

PROVISION OF LODGING TO THE KURDS

33. I and other Board and Advisory Board members of the HLP have provided lodging in the past and would like to provide lodging in the future to Kurds who are members of the ERNK, the Association of Lawyers from Kurdistan, the Legal Support Association ("AZADI"), the Kurdish Red Crescent, the Federation

of Kurdish Associations in Germany ("YEK-KOM"), Kurdisches Institut fur Wissenschafft und Forschung, Medico International, for members of the Kurdistan Parliament in Exile and members and supporters of the PKK and the ERNK in our homes and in rented lodgings in the United States and abroad. However, we are afraid to continue doing so, lest we face criminal prosecution under the AEDPA. The AEDPA broadly defines "material support or resources" to include the provision of "lodging."

SOME ADVERSE EFFECTS OF THE AEDPA

34. The AEDPA has had a chilling effect on my right and the right of the HLP, to freedom of speech and association under the United States Constitution. Despite many years of practice as an attorney and as an Administrative Judge, I find the definition of "material support or resources" in 18 U.S.C. Section 2339A(b) to be so vague that I am forced to speculate as to whether or not the activities I have described above could constitute crimes under the AEDPA. The definition fails to provide meaningful guidance as to the situations in which support and resources become "material." Moreover, the inclusion of the potentially far-reaching terms, "personnel" and "training" in the definition raises the possibility that the scope of activities constituting crimes under AEDPA could be extremely broad. Fear of criminal prosecution under the AEDPA has caused me and members of the HLP to experience tremendous anguish and anxiety in any continued political advocacy and prevision of material support for the human rights of the Kurds and the PKK. Specifically, the AEDPA has: inhibited our efforts to train Kurds and PKK members to promote their human rights interests; restricted

our freedom to associate with and provide lodging to Kurds and PKK members; caused us to refrain from soliciting funds for, or contributing funds to, the lawful activities of the PKK, and other Kurdish causes; and inhibited our efforts to publish articles describing how the Turkish government has denied the Kurds their human rights and describing developments in international law that could benefit the Kurds and the PKK.

35. Furthermore, upon learning that the PKK was designated as a foreign terrorist organization under the AEDPA, I felt compelled, as the President of HLP, to advise its Board and Advisory Board members to be constrained in their activity in behalf of the Kurds and the PKK. Yet, for the HLP to restrict its political advocacy in behalf of the Kurds and the PKK before the United Nations and the United States Congress, for it to limit any training of the Kurds and the PKK to promote their own political interests, for it to be inhibited in associating or offering lodging to the Kurds and PKK members, and for it to not solicit funds for, nor contribute funds to, the lawful activities of the PKK, to support Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak, and to other Kurdish causes, offends the core purposes of the HLP and substantially interferes with its operation.

36. The PKK is a party to an armed conflict governed by the Geneva Conventions, the Hague Conventions and other treaty-based and customary international humanitarian law. This status is legally contradictory to a label as a terrorist organization. Sanctioning groups or individuals who align themselves with a party to a conflict is also contrary to the laws of armed conflict. Humanitarian aid to any party to a conflict or

to victims of armed conflict ought not to be subject to sanctions or prohibitions. The Geneva Conventions mandate that such aid is legal and may not be criminalized in any way by any party to the Geneva Conventions. Humanitarian aid includes legal services, advocacy and material resources that are provided to entities that comply with humanitarian law with respect to the rights of combatants and victims of war. Therefore, no part of my declaration is intended or should be inferred to suggest any acquiescence on my part or on the part of the HLP in that designation by the United States Secretary of State.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of March, 1998, in Los Angeles, California.

/s/ RALPH DAVID HAYS FERTIG
RALPH DAVID HAYS FERTIG

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No. 98-1971 ABC (BQRx)

HUMANITARIAN LAW PROJECT, ET AL., PLAINTIFFS

v.

JANET RENO, ET AL., DEFENDANTS

Dated: Apr. 21, 1998

DECLARATION OF KENNETH R. McKUNE

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1. I, Kenneth R. McKune, am Associate Coordinator for Counterterrorism in the United States Department of State. In this capacity, I am responsible for the formulation, coordination and implementation of United States foreign policy regarding international terrorism. As the Associate Coordinator for Counterterrorism, I serve as a principal advisor to the Secretary of State, and report to her on substantive matters relating to the assessment of foreign terrorist threats and developments worldwide.

2. The Office of the Coordinator for Counterterrorism was established within the Office of the Secretary of State in 1985. In coordinating overseas counterterrorism policy and responding to international terrorist incidents, my office receives reporting and analysis from U.S. intelligence and law enforcement agencies, and from various foreign sources and embassies. The

information collected by the Department of State pertains to many different foreign terrorist organizations, including the Kurdistan Workers' Party (PKK) and the Liberation Tigers of Tamil Eelam (LTTE). Such data may be classified or unclassified, depending upon the method of collection, source, and content.

3. I make the following statement based upon information made available to me in the performance of my official duties, and upon ongoing consultations within the Department of State and with U.S. intelligence and law enforcement agencies. The following observations and conclusions regarding the PKK and LTTE, and the operation of terrorist groups more generally, have been prepared for use in a public proceeding and are therefore unclassified.

The PKK

4. Founded in 1974, the PKK is comprised primarily of Turkish Kurds. Its purpose was and is the establishment of an independent Kurdish state in southeastern Turkey.

5. Since its inception, the group has used violent, terrorist means in aid of its goals. The PKK's insurgency has claimed more than 22,000 lives since 1984. The group has attacked Turkish targets in Turkey, and elsewhere in Western Europe. In recent years, the PKK has moved beyond rural-based insurgent activities and embraced urban terrorism. Innocent U.S. civilians have suffered as a direct result of PKK terrorism. The following illustrative incidents are only a portion of the terrorist attacks perpetrated by the PKK.

a. The PKK claimed responsibility for the bombings of an oil pipeline in southeast Turkey on January 22, 1997 and March 10, 1997.

b. On October 29, 1996, a PKK suicide bomber detonated explosives outside a police station in Sivas, Turkey, killing herself, her accomplice, a bystander, and three policemen. Four other individuals, three of whom were civilians, were also injured. The PKK publicly claimed responsibility for this attack.

c. On October 25, 1996, a PKK suicide bomber detonated a bomb at a Turkish police station in Adana, Turkey, killing herself, three policemen, and a civilian bystander.

d. On September 23, 1996, PKK members hijacked a local bus in Turkey and kidnapped two passengers, one of whom was a U.S. citizen. They were released on September 27, 1996.

e. On June 30, 1996, a PKK suicide bomber detonated a bomb on her person in the middle of a group of soldiers in the town square of Tunceli, Turkey, killing herself and nine others, and wounding 35.

f. In May 1996, PKK leader Abdullah Ocalan publicly announced the PKK's intention to conduct terrorist attacks in areas of Turkey frequented by tourists.

g. On August 28, 1995, Turkish security personnel located and disarmed three PKK bombs at the Galleria Mall in Istanbul.

h. The PKK claimed responsibility for a series of four bombings in downtown Istanbul on August 27, 1995 which killed two people and wounded at least ten others, including a U.S. citizen.

i. In June 1994, the PKK claimed responsibility for a bomb attack on a ferry transiting the Bosporus Straits.

j. On November 4, 1993, five widely scattered properties in London, England with links to Turkey were firebombed in near-simultaneous attacks by the PKK.

k. On October 9, 1993, PKK members stopped a local bus in northeastern Turkey and kidnapped a U.S. tourist and a New Zealand tourist, holding them hostage until November 19, 1993.

l. In September 1992, the PKK claimed responsibility for an arson attack on the passenger ferry SARAYBURNU, while it was moored in Istanbul.

The LTTE

6. The LTTE was founded in 1976 to advocate the establishment of an independent Tamil state in Sri Lanka. As noted below, LTTE has used terrorist tactics, including bombings and political assassinations, to prosecute its campaign for independence. The following illustrative incidents are only a portion of the terrorist attacks perpetrated by the LTTE.

a. On March 5, 1998, an LTTE suicide bomber exploded a car bomb in Maradana, Sri Lanka, killing 37 people, and injuring more than 238 others.

b. On January 25, 1998, the LTTE exploded a truck bomb at the Buddhist Temple of Tooth in Kandy, killing 13 people and injuring 23 others.

c. On October 15, 1997, the LTTE detonated a truck bomb near the World Trade Center in central Co-

lombo, injuring more than 100 people including 40 foreigners, among them seven U.S. citizens. Thirteen others were killed in ensuing gunfire between the LTTE terrorists responsible for the attack and security forces.

d. On September 9, 1997, the LTTE attacked a civilian ship north of the port of Trincomalee. Thirty-two people were killed in a subsequent gun battle between LTTE terrorists and security forces.

e. On July 17, 1997, the LTTE seized a cargo ship carrying food, killing one crew member.

f. On July 24, 1996, the LTTE exploded two bombs on a rush-hour commuter train, killing 57 people and injuring more than 250 others.

g. On July 7, 1996, an LTTE suicide bomber killed 21 people and wounded 50 others, including a Sri Lankan cabinet minister.

h. On January 31, 1996, the LTTE exploded a truck bomb filled with an estimated 1,000 pounds of explosives at the Central Bank in Colombo, killing 100 people and injuring more than 1,400. This bombing was the most deadly terrorist incident in the world in 1996.

i. On August 7, 1995, an LTTE suicide bomber exploded a bomb hidden in a coconut cart in Colombo, killing 24 and wounding 40 others.

j. On June 4, 1995, the LTTE exploded a bomb on a ship chartered by the International Committee of the Red Cross in Northern Jaffna.

k. On November 24, 1994, Sri Lankan opposition leader Gamini Dissanayake and 51 others were killed by an LTTE suicide bomber.

l. On April 8, 1994, the LTTE exploded bombs at three Colombo hotels, killing two people.

m. On May 1[,] 1993, an LTTE suicide bomber killed President Ranasinghe Premadasa and 23 others in Colombo.

n. On April 23, 1993, the LTTE assassinated former Sri Lankan Security Minister Lalith Athulathmudali at a rally in Colombo.

o. On September 1, 1992, the LTTE detonated a "bicycle bomb" in eastern Batticaloa, killing 22 civilians.

p. On July 8, 1991, LTTE forces killed 27 civilians in Batticaloa.

q. The LTTE used a car bomb to assassinate Sri Lankan Deputy Defence Minister Ranjan Wijeratne in Colombo on March 2, 1991.

r. On August 12, 1990, LTTE forces killed 120 civilians at Eravur.

s. On August 3, 1990, LTTE personnel used machetes, guns and grenades to kill 140 civilians praying at a mosque in the eastern Sri Lankan village of Kattankudy.

t. On April 13, 1989, an LTTE car bomb exploded in Trincomalee, killing 51 people.

u. On November 14, 1998, LTTE terrorists killed 27 Sinhalese in an attack on a bus in Trincomalee.

v. On June 2, 1987[,] LTTE terrorists stopped a passenger bus and shot 33 passengers, including 29 Buddhist monks near the eastern town of Arantalawa.

w. On April 21, 1987, an LTTE car bomb exploded at a Colombo, Sri Lanka bus terminal, killing 113 people.

Foreign Terrorist Organization Structure and Funding

7. In the interest of law enforcement and national security, and in furtherance of U.S. foreign relations, the Antiterrorism and Effective Death Penalty Act of 1996 prohibits the provision of material support or resources to foreign terrorist groups that have been formally designated, pursuant to statute, as "foreign terrorist organizations" by the Secretary of State. In prohibiting comprehensively the provision of such support and resources, the law does not differentiate between the criminal, terrorist activities of these organizations, and the civil, non-violent activities, if any, in which they might engage. In legislating this particular dimension of the "material support" ban, the Congress found that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct."

8. The experience and analysis of the U.S. government agencies charged with combating terrorism strongly supports this congressional finding. Given the purposes, organizational structure, and clandestine nature of foreign terrorist organizations, it is highly likely that any material support to these organizations will ultimately inure to the benefit of their criminal, terrorist functions—regardless of whether such support was ostensibly intended to support non-violent, non-terrorist activities.

9. This conclusion is based on a number of facts and circumstances. Many of the terrorist organizations designated by the Secretary derive a significant portion of their overall financing from fundraising conducted outside of their area of operations; in the case of the LTTE, for example, the group has historically raised a significant percentage of its funds—millions of dollars annually—in Europe and North America. Organizations such as the PKK and LTTE have established political or humanitarian components in addition to those components that carry out acts of terror. When foreign terrorist organizations that have a dual structure raise funds, they highlight the civilian and humanitarian ends to which such moneys could be put. But at the same time, the funds collected under the guise of political or humanitarian activities ultimately support the terrorist activities of these organizations.

10. This support comes in a variety of forms. Funds raised ostensibly for charitable purposes have in the past been redirected by some terrorist groups to fund the purchase of arms and explosives. For example, Sri Lankan officials have publicly stated that funds raised by the LTTE in London have been used to acquire weapons and explosives. Leaders of LTTE fundraising efforts have publicly admitted that they are not so "naive" as to assume that funds collected by the LTTE will be used only for the "humanitarian" purposes advertised by the LTTE. In the case of other designated terrorist organizations, funds raised for purportedly legitimate purposes are used to support the establishment of logistical infrastructure (communications, housing and the like) and intelligence networks that are shared both by those group members involved in civilian activities and those involved in terrorist activities.

11. Terrorist organizations do not maintain *organizational* "firewalls" that would prevent or deter such sharing and commingling of support and benefits. To the contrary, in the case of many terrorist groups, there is contact and in some cases, coordination, between those individuals involved in terrorist activities, and those involved in ostensibly civil, political or humanitarian functions. Indeed, some designated foreign terrorist organizations use social and political components to recruit personnel to carry out terrorist operations, and to provide support to criminal terrorists and their families in aid of such operations.

12. Likewise, there is reason to believe that foreign terrorist organizations do not maintain legitimate *financial* firewalls between those funds raised for civil, nonviolent activities, and those ultimately used to support violent, terrorist operations. Terrorist groups operate in clandestine fashion to impede their apprehension by law enforcement authorities. Foreign terrorist organizations can and do take advantage of the fact that money is fungible and that there exist myriad ways to disguise its origin and transfer. It is uniquely in the interests of foreign terrorist organizations *not* to maintain accurate records, *not* to reveal sources of funding for arms, explosives and logistical infrastructure, *not* to admit that they derive criminal, terrorist benefit from ostensibly civilian, humanitarian activities, and indeed, *not* to admit to supporters who believe in the existence of "firewalls" that often these are no more than convenient rationalizations.

13. The PKK has itself not respected the line between humanitarian and violent activities. In January 1997, the United Nations High Commissioner for Refu-

gees was forced to close a Kurdish refugee camp in northern Iraq because the camp had come under the control of the PKK, and the PKK had failed to respect its "neutral and humanitarian nature." According to press reports, PKK members "systematically tried to convert [the camp] from a refugee camp into an operational base."

14. Even if funds or goods raised for charitable purposes are in fact so used in their entirety, the addition of such funds or goods to the coffers of terrorist groups such as PKK and LTTE unencumbers funds raised from other sources for use in facilitating violent, terrorist activities and gaining political support for these activities. Thus, humanitarian support, however well-intentioned, *increases* the resources that a terrorist organization can dedicate to unlawful, criminal ends. Individuals who wish to assist people in need may provide aid through the many legitimate organizations *not* affiliated with designated terrorist groups that have embraced terror, violence and attacks on innocent civilians.

15. The "cover" of charitable or political non-violent activities located within the organizational structure of a foreign terrorist organization provides effective concealment for the movement and preparations of criminal terrorists, and substantially undermines the investigatory efforts of law enforcement personnel in the United States and abroad, both by the United States and foreign governments. Because money is fungible and difficult to trace, and because terrorist groups do not open their books to the outside world, it is exceedingly difficult for U.S. law enforcement agencies to distinguish between funds used to support exclusively non-violent humanitarian activities, and those used to support crimi-

nal, terrorist activities. The means by which terrorist organizations transfer funds abroad are varied and obfuscatory: wire transfers; check cashing services; couriers carrying cash; and complex real estate transactions and bogus commercial transactions. Once funds are transferred to foreign institutions, the ability of the U.S. government to identify the end-recipients and beneficiaries of such funds is dramatically diminished.

16. In addition to national security and law enforcement interests, foreign policy imperatives also strongly support the prohibition on material support to designated terrorist organizations. A number of designated foreign terrorist organizations have attacked moderate governments with which the United States has vigorously endeavored to maintain close and friendly relations. Terrorist attacks on such governments threaten their social, economic and political stability, cause enormous human suffering, and endanger Americans visiting or residing overseas. In some cases, designated terrorist groups also threaten to undermine important foreign policy initiatives undertaken by the United States that have significance for U.S. vital interests beyond our bilateral relations with individual countries. For example, some designated terrorist groups engage in terrorist violence designed to undermine the Middle East peace process, which is of vital interest to the United States; other foreign terrorist organizations attack our NATO allies, thereby implicating important and sensitive multilateral security arrangements. It is a [*sic*] therefore a foreign policy priority of the United States to ensure that terrorist groups do not succeed in undermining such initiatives and arrangements, or in destabilizing foreign governments whose support and cooperation is vital to the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 21, 1998.

/s/ KENNETH R. MCKUNE
KENNETH R. MCKUNE